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Supreme Court of the United States

OCTOBER TERM, 1953

No. 79

JULIUS EMSPAK, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MAY 13, 1953.
CERTIORARI GRANTED OCTOBER 12, 1953.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,943.

JULIUS EMSPAK, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the District of Columbia.

JOINT APPENDIX.

Filed March 1, 1951

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Criminal No. 1742-50

Notice of Appeal

Name of address of appellant: Julius Emspak, 11 East 51st Street, N. Y. C.

Name and address of appellant's attorney, Allan R. Rosenberg, 1741 K Street, N. W., Washington, D. C.

Offense: Violation of RS 102 2 USC 192.

Concise statement of judgment or order, giving date, and any sentence: Adjudged guilty of violation of RS 102 for refusing to answer questions of House Committee on Un-American Activities March 1, 1951, jail 6 months, $500 fine.

Name of institution where now confined, if not on bail: D. C. Jail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

JULIUS EMSPAK,
Appellant,

ALLAN R. ROSENBERG,
Attorney for Appellant.

Date, March 1, 1951.
A true copy.

Test:
HARRY M. HULL, *Clerk.*
By HELEN M. MCINTOSH, *Deputy Clerk.*

Filed March 2, 1951

Form of Clerk's Statement of Docket Entries to be Forwarded Under Rule IV

(To accompany duplicate notice of appeal to the United States Circuit Court of Appeals)

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Criminal No. 1742-50

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

1. Indictment for Vio. Sec. 192, Title 2, U. S. Code, filed Nov. 20, 1950; 2. Arraignment, Nov. 24, 1950; 3. Plea to indictment, Not Guilty, Nov. 24, 1950; 4. Trial by court, Feb. 19, 1951; 5. Finding of guilt, Guilty as indicated, Feb. 26, 1951; 6. Judgment—(with terms of sentence) Six (6) months and to pay a fine of $500.00. Letts, J. entered March 1, 1951; 7. Notice of appeal filed March 1, 1951.

Date—March 2, 1951.

Attest

HARRY M. HULL
Clerk

By: HELEN M. McINTOSH
Deputy Clerk

N. B.—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules VII, VIII, and IX.

Filed in Open Court November 20, 1950

303 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

(Grand Jury Impaneled on October 3, 1950 and Sworn in on October 4, 1950)

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Criminal No. 1742-50

Grand Jury Original
(2 U. S. C. 192)

Indictment

INTRODUCTION

The Grand Jury charges:

On December 5, 1949, at and within the District of Columbia, a duly created sub-committee of the Committee on Un-American Activities of the House of Representatives was conducting an inquiry pursuant to authority conferred upon it by law, and particularly subsection (q) (2), Section 121 of The Legislative Reorganization Act of 1946, 60 St. L. p. 828 and House Resolution 5 of the Eighty-first Congress. The defendant Julius Emspak appeared as a witness before that sub-committee at the place and on the date above stated, and was asked questions all of which were pertinent to the question then under inquiry before the sub-committee. At the time and place stated the defendant refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition simply describe

the question which was asked of the defendant and which he refused to answer.

COUNT ONE

Whether the defendant was acquainted with Joseph Persily.

COUNT TWO

In what capacity Joseph Persily was associated with UE (meaning United Electrical, Radio, and Machine
304 Workers of America) at the time the question was asked.

COUNT THREE

Whether Joseph Persily was an organizer in the UE (meaning United Electrical, Radio and Machine Workers of America).

COUNT FOUR

Whether the defendant was acquainted with Albert Smith.

COUNT FIVE

Whether Albert Smith was employed by the UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT SIX

Whether Max Helford had even been connected with UE (meaning United Electrical, Radio, and Machine Workers of America) as a field organizer.

COUNT SEVEN

Whether Max Helford was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America) at the time the question was asked.

COUNT EIGHT

Whether Phil Saba was originally from local 155.

COUNT NINE

Whether Phil Saba was a field organizer for the UE (meaning United Electrical, Radio, and Machine Workers of America) in district 1 at the time the question was asked.

COUNT TEN

Whether Hank Rhine was an international representative of the UE (meaning United Electrical, Radio, and Machine Workers of America) at the time the question was asked.

COUNT ELEVEN

Whether Jack Gorelick was affiliated with the UE (meaning United Electrical, Radio, and Machine Workers of America) at the time the question was asked.

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COUNT TWELVE

Whether Ernest Moyer was a field organizer for UE (meaning United Electrial, Radio, and Machine Workers of America) in the Easton area.

COUNT THIRTEEN

Whether the defendant knew James Lustig.

COUNT FOURTEEN

Whether James Lustig was an international representative of the UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FIFTEEN

Whether Morris Kersten was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT SIXTEEN

Whether Fred Haug was an international representative of the UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT SEVENTEEN

Whether Charles Newell was an international representative of the UE (meaning United Electrical, Radio and Machine Workers of America).

COUNT EIGHTEEN

Whether Leo Turner was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America) in district 6.

COUNT NINETEEN

Whether Hugh Harley was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY

Whether Arthur Garfield was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

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COUNT TWENTY-ONE

Whether Ernest DeMaio was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-TWO

Whether Henry Fiering was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-THREE

Whether Herbert Hirschberg was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-FOUR

Whether K. M. Kirkendahl was a field organizer of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-FIVE

Whether Robert Harrison was a field organizer of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-SIX

Whether William Santora was a field organizer of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-SEVEN

Whether Marcel Scherer was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-EIGHT

Whether Louis I. Sorti was a field organizer of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT TWENTY-NINE

Whether Philip V. Gelder was an international representative of UE (meaning United Electrical, Radio,
307 and Machine Workers of America).

COUNT THIRTY

Whether Perez Zagorin was a field organizer of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-ONE

Whether Carl Brandt was connected or associated in any way as an international representative or otherwise with UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-TWO

Whether Al Clough was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-THREE

Whether John Thomas was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-FOUR

Whether Fred Keller was a field organizer with UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-FIVE

Whether John Mitchell was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-SIX

Whether Fred Sheppart was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-SEVEN

Whether L. B. Slagle was a field organizer with UE (meaning United Electrical, Radio, and Machine Workers of America).

308 COUNT THIRTY-EIGHT

Whether Robert B. Logsdon was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT THIRTY-NINE

Whether John Bittman was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY

Whether William B. Elconon was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-ONE

Whether H. M. Martinson was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-TWO

Whether Irene Berman was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-THREE

Whether Allan Bjorklund was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-FOUR

Whether Thomas Foley was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-FIVE

Whether Robert Kirkwood was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-SIX

Whether Lee Lundgren was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

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COUNT FORTY-SEVEN

Whether William Mauseth was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-EIGHT

Whether William Sheehan was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FORTY-NINE

Whether Phillip H. Smith was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FIFTY

Whether the defendant knew John T. Bernard.

COUNT FIFTY-ONE

Whether John T. Bernard was a field organizer for the UE (meaning United Electrical, Radio, and Machine Workers of America) in the Chicago district.

COUNT FIFTY-TWO

Whether Peter Besch was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FIFTY-THREE

Whether T. Louis Majors was an international representative of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FIFTY-FOUR

Whether Robert McNaughton was a field organizer of UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FIFTY-FIVE

Whether John Paradise was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

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COUNT FIFTY-SIX

Whether Nick Tomasetti was a field organizer for UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT FIFTY-SEVEN

Whether the defendant was acquainted with James MacLeish.

COUNT FIFTY-EIGHT

Whether James MacLeish was at the time the question was asked president of district 4, United Electrical, Radio, and Machine Workers of America.

COUNT FIFTY-NINE

Whether the defendant had ever been affiliated with the National Federation for Constitutional Liberties.

COUNT SIXTY

Whether the defendant had ever been associated with the Civil Rights Congress.

COUNT SIXTY-ONE

Whether the defendant denied or affirmed the statement said to have been made by Salvatore M. Vottis that Vottis had attended fraction meetings of the Communist Party along with the defendant and other members of the UE (meaning United Electrical, Radio, and Machine Workers of America).

COUNT SIXTY-TWO

Whether the defendant denied or affirmed that statement said to have been made by Salvator M. Vottis that the defendant attended Communist Party meetings held in his home in Schenectady, New York.

COUNT SIXTY-THREE

Whether the defendant was a member of the Communist Party at the time the question was asked.

COUNT SIXTY-FOUR

Whether the defendant was a member of the Communist Party at any time he signed the affidavit required
311 by the Taft-Hartley law.

COUNT SIXTY-FIVE

Whether the defendant had ever paid Communist Party dues.

COUNT SIXTY-SIX

Whether the defendant had ever signed an application to join the Communist Party.

COUNT SIXTY-SEVEN

Whether the defendant had ever registered as a member of the Communist Party.

COUNT SIXTY-EIGHT

Whether the defendant as a member of the Communist Party attended the trial of Earl Browder at Communist Party headquarters in New York City.

GEORGE MORRIS FAY
United States Attorney in and for the District of Columbia

A True Bill: LLOYD B. WILSON, JR., *Foreman.*

Filed November 27, 1950

312 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES

v.

JULIUS EMSPAK, *Defendant*

Criminal No. 1742-50

Charge Vio. sec. 192, title 2, U. S. Code.

Plea of Defendant

On this 24th day of November, 1950, the defendant Julius Emspak, appearing in proper person and by his attorney

Alan Rosenberg, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

By direction of

BURNITA S. MATTHEWS
Presiding Judge
Criminal Court No. One

HARRY M. HALL
Clerk

By C. H. MILSTEAD
Deputy Clerk

Present:

United States Attorney

By CHARLES B. MURRAY
Assistant United States Attorney

H. B. SMITH
Official Reporter

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313 Filed December 19, 1950

Motion to Dismiss Indictment and for Other Appropriate Relief

The defendant above named moves, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, on the indictment herein, on the affidavit of Julius Emspak, the affidavits of David Scribner, Esq., and the affidavit of Albert J. Fitzgerald, all verified December 16, 1950, that the indictment be dismissed, or that appropriate relief be granted, upon the following grounds:

1. Section 192 of Title 2 of the United States Code is unconstitutional on its face and as construed and applied herein in that it violates the constitutional privilege against self-incrimination contained in the Fifth Amendment to the Constitution of the United States.

2. Section 192 of Title 2 of the United States Code is unconstitutional on its face and as construed and applied herein in that it exceeds the bounds of the constitutional power of the Congress to investigate in aid of its legislative jurisdiction.

3. Section 192 of Title 2 of the United States Code is unconstitutional on its face and as construed and applied herein in that it is vague and indefinite, and fails to provide an ascertainable standard of conduct in violation of the Fifth and Sixth Amendments to the Constitution of
314 the United States.

4. Section 192 of Title 2 of the United States Code is unconstitutional on its face and as construed and applied herein in that it violates the First Amendment to the Constitution of the United States.

5. Section 121, Legislative Reorganization Act of 1946, subsection (q) (2) and House Resolution 5 of the 81st Congress creating the House Committee on Un-American Activities are unconstitutional on their face and as applied and construed herein:

(a) in that they violate the constitutional privilege against self-incrimination contained in the Fifth Amendment to the Constitution of the United States.

(b) in that they are vague and indefinite and fail to provide an ascertainable standard for conduct in violation of the Fifth and Sixth Amendments to the Constitution of the United States

(c) in that they violate the First, Ninth and Tenth Amendment to the Constitution of the United States.

(d) in that they constitute a Bill of Attainder.

6. The indictment fails to charge an offense under the laws of the United States.

7. The indictment fails to charge an offense under the laws of the United States in that the questions asked exceeded the bounds of legislative inquiry and were not pertinent to any question properly under inquiry before the Committee.

8. The indictment fails to state an offense under the laws of the United States in that it fails to allege that the defendant was directed by the Subcommittee to answer the questions set forth in the indictment.

9. The indictment violates the Fifth Amendment to the United States Constitution and Rule 7 of the Federal Rules of Criminal Procedure in that it fails to provide the defendant with adequate notice of the offense with which he is charged.

315 10. The indictment is void and illegal in that there are less than 12 members of the Grand Jury which voted the indictment who were impartial and free from prejudice or bias against the defendant, and therefore as to this defendant the alleged Grand Jury was illegally constituted. The indictment should be dismissed or in the alternative the defendant should be granted a hearing at which he can offer proof that bias or prejudice existed on the part of more than 11 of the Grand Jurors.

11. The indictment is improperly and illegally drawn and is prejudicial to the defendant in violation of the Federal Rules of Criminal Procedure in that the alleged acts set forth in the several counts of the indictment were questions directed all to one subject of inquiry and were simultaneous and continuous acts constituting only one alleged offense which could only be charged in a single count.

12. The indictment as drawn places the defendant in double jeopardy for a single offense in violation of the Fifth Amendment to the United States Constitution.

And in the alternative, the defendant moves the Court for an order directing the United States Attorney for the District of Columbia to serve and file a Bill of Particulars setting forth in detail the answers to the following:

1. By what authority and in what manner was the "Subcommittee" on Un-American Activities of the House of Representatives appointed or designated?

2. What was the specific question then under inquiry before the "Subcommittee"?

316 3. What facts did each question which is set forth in each count of the indictment seek to elicit in respect to the question then under inquiry before the "Subcommittee"?

4. State all the questions asked and answers made by the defendant at his appearance before the "Subcommittee" at the hearing on December 5, 1949.

DAVID SCRIBNER
Office & Post Office Address
11 East 51st Street
New York 22, New York

ALLAN R. ROSENBERG
Office & Post Office Address
1741 K Street, N.W.
Washington, D. C.
Attorneys for Defendant

Dated: December 16, 1950

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318 **Affidavit of Albert J. Fitzgerald**

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

ALBERT J. FITZGERALD, being duly sworn, deposes and says:

I am the General President of the United Electrical, Radio and Machine Workers of America (UE), hereafter referred to as the UE, a labor union of workers in the electrical, radio and machine manufacturing industry. The UE represents over 300,000 employees in that industry.

This affidavit is in support of the motion of the defendant herein, an officer and member of the UE, to dismiss the indictment.

It is my understanding, and I have been so informed by counsel, that a Congressional Committee, under our Constitution, does not have unlimited power to conduct investigations into the affairs of private citizens and their organizations. It is my understanding that a Congressional Committee may carry on an investigation only in aid of legislative functions properly within the constitutional limitations on Congressional power.

The investigations and hearings of the House Un-American Activities Committee out of which this indictment arose, exceeded the bounds of constitutional power and were directed toward objectives totally unrelated to the legitimate legislative business of the Committee or the House of Representatives.

The investigation and hearings of August 9, 1949 to which defendants Thomas Fitzpatrick, Frank Panzino and Thomas Quinn, also members of UE, were subpoenaed were openly directed by the Committee toward the objective of interfering with and influencing the outcome of a local union election then pending in Pittsburgh, Pennsylvania. The objective of the Congressional inquiry was obviously to influence the outcome of this election. Such an inquiry lies far beyond the constitutional legislative bounds of the Committee or the Congress.

The *Pittsburgh Press*, on August 5, 1949, stated in respect to the objectives of this investigation:

> "Other Committee sources said it was their understanding *that the entire point of the hearing was to disclose the Communist infiltration into the powerful local prior to the election so the members would know for whom they were voting.*
>
> *"They said a postponement would defeat the primary objective of the investigation."* (*Pittsburgh Press*, Aug. 5, 1949) (Emphasis supplied)

The *Pittsburgh Post-Gazette* on August 7, 1949 reported the opinions of members of Congress themselves that the Committee investigation was directed to no legitimate legislative function of Congress:

319 "PROBE TIED TO UE ELECTION"

by Ingrid Jewell

"A week from today Local 601 of the United Electrical Workers Union, the big Westinghouse unit, will elect delegates to the UE Convention, to be held in Cleveland Sept. 19.

"During this coming week the House Un-American Activities Committee will hold hearings in Washington on alleged infiltration of Communists into Local 601.

"The Un-American Activities Committee investigation was sought from Representative Francis Walter, Democrat, Easton, Pa., a committee member, by the Reverend Charles Owen Rice, a Pittsburgh Jesuit priest, who is a leader of the Association of Catholic Trade Unions, and by two lay members of that association, Ernest Vida and John Duffy.

"The Pittsburghers said they feared Communist infiltration in Local 601 would endanger production of and research on radar.

"Western Pennsylvania congressmen believe, however, the investigation was requested at this time to influence next Sunday's election and ultimately the election of the international officers at the convention.

"The congressmen are divided as to whether this outside influence is a good thing. The UE International does not have a constitutional provision barring Communists."

". . . .

"At stake in next Sunday's election at Local 601 are about 150 delegate votes. There will be about 4,000 votes at the convention in Cleveland, but the question of whether to retain or change the international leadership is a burning one, not only in Pittsburgh, but in other industrial centers where UE has a large membership.

"*So even 150 votes could be a decisive factor in the international's election at the convention, our congressmen believe.*"

The Committee itself never disavowed this objective. According to the press, Congressman Walter, a member of the Committee, conceded that the Pittsburgh investigation was instigated at the request of a clergyman interested in assisting an inner union clique in its attempt to win a local election. (See the *Pittsburgh Post-Gazette,* July 31, 1949.) Even during the hearing itself Committee members acknowledged that they had consulted representatives of this inner union clique in determining the objectives and timing of the hearings. (Hearings, p. 605). Throughout the entire hearing it was made perfectly clear that the objective of the investigation was to provide a sounding board for one faction in an internal union fight so as to influence and determine the course of a local union election. (Hearings, p. 610). Such an investigation was not in aid of legislation; it was openly and frankly designed to interfere in and influence the results of a local trade union election. Such an objective lies totally beyond the constitutionally defined powers of the Committee or the House of Representatives.

320 The hearings held on Dec. 5 and 6, 1949, which resulted in the indictments of the defendants Julius Emspak and James J. Matles were a continuation of the investigation launched by the Committee during the summer of 1949, and were similarly totally beyond the constitutional power of the Committee, being directed toward objectives foreign to the legislative functions of the Congress.

The announced purpose of the Dec. 5 and 6th hearings insofar as they affected Mr. Emspak and Mr. Matles was to inquire into a possible violation of the Taft-Hartley Law.

On November 17, 1949, the *New York Times* ran a story which revealed the objective of the Committee's hearings as "looking into the validity of non-Communist affidavits filed by officers of the left wing United Electrical, Radio & Machine Workers of America."

> "The House Committee on Un-American Activities disclosed last night in Washington that it was looking

into the validity of non-Communist affidavits filed by officers of the left wing United Electrical, Radio & Machine Workers of America.

" . . . A spokesman for the Congressional investigating committee said it had issued subpoenas for Julius Emspak, Secretary-Treasurer, and James J. Matles, the Union's Director of Organization, before a subcommittee on November 29th. The spokesman indicated that the committee wanted to question the two officials about the affidavits they submitted to the National Labor Relations Board under the provisions of the Taft-Hartley Act. . . .

"The Committee said the subpoenas had been issued three weeks ago. This was just after the Union had filed affidavits with the NLRB and two weeks before the CIO revoked its charter."

(*New York Times*, Nov. 17, 1949)

The entire course of the actual hearings revealed the objective of the Committee in seeking to disclose a possible violation of Section 80 of the Criminal Code for false statements made in the so-called Taft-Hartley non-Communist affidavits. (See transcript of hearings.)

This investigation of the Committee was in its nature clearly judicial. It was totally in excess of the power of the Committee or the House of Representatives. The Committee cannot compel the divulgence of information for the purpose of ascertaining whether a crime has been committed as the basis for a criminal prosecution. This is not the function of a Congressional Committee.

The Dec. 5 and 6th Congressional hearings, just as the summer hearings, were quite frankly designed not to further any legislative objective, but rather to intervene openly in the interest of one faction in a union election, and to attempt to prepare criminal prosecutions of the leaders of the union.

321 The last hearings involving members of UE, held in July 1950, out of which the indictments of Esther

Tice and Talmadge Raley arose, reveal in a startling fashion that the objective of the investigation was not to assist the legitimate legislative functions of the Congress, but rather to harass and discredit UE members and their union.

The July hearings were held at the request of the *Cincinnati Enquirer,* a notorious anti-labor newspaper. As the *Enquirer* itself stated:

> "Eighteen months of research and diligent digging by James Ratliff, *Enquirer* reporter, and associates on the staff reached fruition when the House Committee turned the witness stand over to witnesses introduced by the *Enquirer.*"
>
> (*Enquirer,* Sunday, July 16, 1950.)

The *Enquirer* sought to have hearings held to serve as a privileged forum for its own partisan articles.

As the *Akron Beacon Journal* reported on July 23, 1950:

> "The story behind the Ohio Un-American Committee 1950 hearing is an interesting one. Last year the Cincinnati Enquirer began a series of articles about Communism in Cincinnati, but because of fear of libel, it used practically no names. In an effort to get the names on the record in the committee it brought its star witness Cecil Scott to Washington and tried to get the committee to hear him.
>
> "The committee refused because Scott had served time for forgery and had also been a mental patient.
>
> "The other Cincinnati papers heard about the fiasco and gave the Enquirer such a roasting that it redoubled its efforts to get a hearing.
>
> "Helped along by some Republicans who saw the *political possibilities,* and provided with more acceptable witnesses, *the paper was finally able to get the committee to hold the hearing.*"

Despite the obvious incompetence of Scott's testimony the Committee not only proceeded to hold the hearings but centered the entire questioning of UE member Tice upon a crude forgery which Committee member Walter later

charged was perpetrated by Scott, the star witness of the *Enquirer*. As Congressman Walter's statement reveals, not only was the Committee fully aware of the utter incompetence of the witness initiating the hearing, but also the Committee was aware that a forged document was being used to frame, smear and incriminate UE members.

The *Cincinnati Post* of October 23, 1950 reported in full Congressman Walter's important revelations:

> "A U.S. representative charged Monday that Cecil D. Scott altered a document before presenting it as evidence to the House committee on un-American activities. The congressman is Rep. Francis I. Walter (D., Pa.). He is vice chairman of the committee.
>
> 322 "Rep. Walter said he would recommend the matter be referred to the U.S. attorney in Washington for action when Congress reconvenes in November.
>
> "Scott was the chief original source of information for James Ratliff, Cincinnati Enquirer reporter, who wrote a series of stories on Communism last February and March.
>
> "Scott testified for five days last summer before the House committee. His testimony never has been released and, according to several committee members, probably never will be.
>
> "Rep. Walter conducted most of the questioning last summer when the committee held a Washington hearing on Communism in Cincinnati and other Ohio cities. "Rep. John McSweeney (D., Wooster, O.) also said that Scott had falsified part of his testimony.
>
> "Apparently the chief investigation of Scott's testimony centered around a letter or letters allegedly written to Esther Tice, former organizer for the United Electrical, Radio & Machine Workers of America.
>
> *Some Not True*
>
> "In announcing that he would recommend the matter be referred to the U.S. attorney for action, Mr. Walter said:

" 'I do know that some of his testimony was not true. Somebody apparently altered a document to lend significance to it. After Scott had offered us what he said was a copy of the letter we obtained the original.

" 'He said what he gave us was a copy. It had been added to. He said he had obtained the letter from a purse or a file and had taken it from the office and copied it, then put the original back.

Obtained Original

" 'The committee got hold of the original and the significant part was not in the original letter.

" 'Our investigators have checked some other parts of his testimony. I do know that, because of that part of his evidence which we found to be false some of us believe that his whole testimony is not entitled to credence.

" 'That fact and the fact he was in a mental institution does not lend credence to his testimony.

Will Recommend Action

" 'I think action should be taken. If he deliberately altered or changed a document to lend significance to it, it should be referred to the U.S. attorney.

" '*I will so recommend when Congress convenes.*'

"In speaking of Scott's reliability, Rep. Walter's colleague, Mr. McSweeney said he also was aware a document had been changed."

(*Cincinnati Post*, October 23, 1956)

The conduct of the Committee in these hearings, culminating not in a prosecution of those who perpetrated the forgery, but in a prosecution of the victims of the
323 forgery reveals in a most striking manner the fact apparent in the earlier hearings, that the Committee was not conducting investigations in good faith designed to assist in legitimate legislative functions of the Congress, but rather had as its objective non-legislative purposes directed toward interference in the internal affairs of a trade

union and the instigation of criminal prosecutions against its leaders and members.

ALBERT J. FITZGERALD

Sworn to before me this 10th day of December, 1950,

DAVID RATNER.

David Ratner, Notary Public, State of New York, No. 41-3211050, Qualified in Queens County, Certs. filed with N. Y., Kings, Bronx and Westchester Co. Clks. Queens, King, N. Y. & Bronx Co. Registers, Commission Expires March 30, 1951.

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324 Filed December 19, 1950

Affidavit of David Scribner

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss:*

DAVID SCRIBNER, being duly sworn, deposes and says:

I am one of the attorneys for the defendant named in the above bill of indictment.

This affidavit is made in support of the motion to dismiss the indictment on the ground that it is void and illegal in that the Grand Jury which voted the indictment was illegally constituted as to this defendant.

I have been advised that the Grand Jury records in this Court will indicate that 10 of the 23 members of the Grand Jury which voted the indictment against this defendant were employed by the government of the United States, and that two of the Grand Jurors are listed in the records as "unemployed."

Information about the employment of the wives or husbands or children of the Grand Jurors can be obtained only from examination of the Grand Jurors at a hearing or from examination of records not presently available to the deponent.

This indictment arises out of an investigation and inquiry by the House Committee on Un-American Activities. The questions in the indictment referred to alleged Communist activities or association. On information and belief, the transcript of the hearing before the "Subcommittee" of the House Committee on Un-American Activities was made available to the Grand Jury.

325 The above facts, among others, in the context of Executive Order 9835, known as the President's Loyalty Order, which order includes as one of the criteria for continued employment the absence of any "sympathetic association" with the Communist Party or other activities alleged to be "subversive", require that the defendant be permitted by the Court to inquire further into actual and implied bias and prejudice on the part of the Grand Jurors.

I respectfully call the attention of the Court to the decision of the Supreme Court of the United States in *Dennis* v. *United States,* 339 U.S. 162, in which opinion the Court held that a defendant has the right to show by proof both actual and implied bias on the part of jurors.

Under the applicable law the defendant must be given an opportunity to demonstrate and inquire into the effect of the President's Loyalty Order upon government employees in general and those in the Grand Jury in particular. The defendant must be given an opportunity to demonstrate that the investigations under the President's Loyalty Order inquire into conduct of government employees including their activities as Grand Jurors or the activities of spouses as Grand Jurors in respect to issues like those involved in the present indictments. I respectfully call to the attention of the Court the threats of the House Committee on Un-American Activities against the Attorney General if indictment in contempt cases were not returned (see 93 Congressional Record 3815, 3932).

In this connection Mr. Justice Jackson's description of the atmosphere in Washington in 1948 insofar as it affects

government employees in *Frazier* v. *United States*, 335 U.S. 497, is certainly even more significant at the present date.

The passage of the Internal Security Act of 1950 and in particular the specific reference to government employees and the sanctions placed therein upon "sympathetic association" by government employees with alleged Communist activities created more than a reasonable presumption of a sufficient influence upon such government employees so as to grant the defendant a hearing at which actual or implied bias and prejudice is shown to be present in the respective Grand Jurors.

326 Under these circumstances the defendant has the right, as the Supreme Court stated in *Dennis* v. *United States*, cited *supra*, to bring "circumstances . . . to the Court's attention which would convince the Court that government employees would not be suitable jurors" in this particular proceeding. Under the mandate of the Supreme Court the defendant likewise has a right to ascertain whether the spouses or relatives of other Grand Jurors are government employees, particularly since they may be employees of the very Congressional Committee here involved. Similarly the defendant has the right to ascertain whether Grand Jurors listed in the records as "unemployed" are now seeking government employment.

Therefore, I respectfully urge the Court to dismiss the indictment and in the alternative that the defendant be granted a hearing pursuant to Rule 12(b) (4) of the Federal Rules of Criminal Procedure to prove by evidence to the Court that more than 11 of the Grand Jurors were actually or impliedly biased and prejudiced against the defendant and that the indictment is therefore void and illegal.

DAVID SCRIBNER

Sworn to before me this 16th day of December, 1950.

DAVID RATNER

David Ratner, Notary Public, State of New York, No. 41-3211050, Qualified in Queens County, Certs. filed with N. Y., Kings, Bronx and Westchester Co. Clks. Queens, King, N. Y. & Bronx Co. Registers. Commission expires March 30, 1951.

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327 Filed December 19, 1950

Affidavit of David Scribner

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss:*

DAVID SCRIBNER, being duly sworn, deposes and says:

1. I am one of the attorneys for the defendant named in the above bill of indictment.

2. I have consulted with the defendant in respect to the charges set forth in the indictment.

3. This application is made in good faith for the purpose of informing the defendant of the particular offense upon which he stands charged.

4. The defendant cannot properly answer the charge set forth in the indictment or move in respect thereto without the additional information asked for in the request for a bill of particulars.

5. Without the information requested the defendant cannot properly prepare a defense.

DAVID SCRIBNER.

Sworn to before me this 16th day of December, 1950,

DAVID RATNER.

David Ratner, Notary Public, State of New York, No. 41-3211050, Qualified in Queens County, Certs. filed with N. Y., Kings, Bronx and Westchester Co. Clks. Queens, King, N. Y. & Bronx Co. Registers, Commission Expires March 30, 1951.

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328 Filed December 19, 1950

Affidavit of Julius Emspak

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss:*

JULIUS EMSPAK, being duly sworn, deposes and says:

I am the defendant in the present action. I am, and have been for the past 14 years, the General Secretary-Treasurer of the United Electrical, Radio & Machine Workers of America (UE), a labor union.

On December 5, 1949, in response to a subpoena served upon me, I appeared in Washington, D. C., before Mr. Morgan M. Moulder, a member of the House of Representatives and a member of the House Committee on Un-American Activities.

At this hearing Mr. Moulder and a Mr. Frank S. Tavenner, Jr., who stated he was counsel for the House Committee, questioned me (Exhibit No. 1, pp. 833-854, 858-859). I answered a large number of questions. However, with respect to the questions referred to in the indictment, I asserted my constitutional privilege against self-incrimination as well as my rights under the First Amendment of the Federal Constitution. There was a very real basis for my fear that the answers sought might be used in an attempt to institute criminal prosecutions against me,
329 or that such answers might supply evidence or clues to evidence or links in a chain of evidence which might be used in criminal prosecutions against me. The questions attempted to elicit whether I was, or had ever been a member of the Communist Party, whether I associated or belonged to certain organizations which in turn had been charged with being Communist or Communist affiliates, and my association with and information concerning certain named individuals whom I knew had been charged with being Communists or Communist supporters, or with being members of or affiliated with organizations listed by Committees of Congress and the Attorney General

or both as "subversive," or had been charged or attacked as such in other ways.

The basis for my fear appears from the following facts, among others, which I had knowledge of at the time I appeared before Mr. Moulder on December 5, 1949:

1. On November 17, 1949, the very day after I received a subpoena from the House Committee on Un-American Activities, the *New York Times* published a report that the Committee was "looking into the validity of non-Communist affidavits" signed by me, and that that was the purpose for the hearing for which I was subpoenaed. (Exhibit No. 2).

2. On November 23, 1949, the newspapers prominently reported that "within 30 days" steps would be taken by the Department of Justice towards criminal prosecution of me based on my signing of the Taft-Hartley affidavit. (Exhibit No. 3).

3. Prior to my appearance on December 5, 1949, the Un-American Activities Committee held hearings on August 9, 10 and 11, 1949, in Washington, D.C., with reference to the alleged Communist infiltration into Local 601, United Electrical, Radio & Machine Workers of America (UE). At that hearing Mr. Tavenner, counsel for the Committee stated, "The purpose of this hearing is to inquire into the question of Communists, Communist affiliation or association of certain members of Local 601 United Electrical, Radio & Machine Workers of America, which is engaged in work at industrial plants important to national defense."
330 (Hearings Regarding Communist Infiltration of Labor Unions—Part I, House Committee on Un-American Activities, August 9, 10, 11, 1949, p. 541.) The hearing at which I testified on December 5, 1949, was a continuation of the investigation into the alleged Communist affiliations of officers of United Electrical, Radio & Machine Workers of America (UE).

4. The Smith Act was in existence at the time of my appearance on December 5, 1949. Communists had already

been indicted, convicted and sentenced on a charge of conspiring to advocate certain doctrines in violation of the Smith Act. I was also aware at the time that there were pending indictments against Communists on the grounds that membership in the Communist Party was an offense under the Smith Act (Exhibit No. 4 and No. 5).

5. It was common knowledge at the time of my appearance on December 5, 1949, that investigations of "Communists" by the Department of Justice and other governmental agencies for the purpose of criminal prosecution, were current throughout the nation (Exhibit No. 6).

6. As a result of my experience in the labor movement, I was of the opinion that aggressive trade union leaders who fought consistently for the needs of the people against vested interests would be charged with being a Communist. I was aware that the Director of the Federal Bureau of Investigation, J. Edgar Hoover, and other government officials, the House Un-American Activities Committee and others had stated on many occasions that the term Communist included "fellow travellers" or "sympathizers."

7. Prior to my appearance on December 5, 1949, I had been charged with being a Communist by the House Un-American Activities Committee, a House Labor Committee, other government officials, certain spokesmen of industry, certain sections of the press, and other individuals and agencies hostile to me and to the union of which I am an officer (Exhibit No. 7, No. 8, No. 9).

8. At the trial of the 11 Communists in New York
331 on a charge of violation of the Smith Act, I had been accused by a government witness of being a Communist and associating with the defendants in that case (Exhibit No. 10). The very House Un-American Activities Committee before which I had been subpoenaed to appear, had been urging the prosecution of Communists (Exhibit No. 11), and had boasted that its information, files, records, testimony, etc. were used extensively by government agencies including the FBI in investigating Communist affiliations or activities (Exhibit No. 12).

9. The National Federation of Constitutional Liberties, and the Civil Rights Congress, concerning which I was questioned, had both been attacked as Communist organizations or Communist-front organizations, or as Communist dominated or supported organizations.

10. When asked questions about certain named individuals, I was aware that practically all, if not all of these individuals had been charged with being Communists or Communist supporters, or members of or affiliated with organizations listed or charged as being Communist. (See, for example, Hearings Regarding Communist Infiltration of Labor Unions—Part I, House Un-American Activities Committee, August 9, 10 and 11, 1949, pp. 651-681; see, also, House Report No. 1115, Report on Civil Rights Congress as a Communist Front organization, September 2, 1947; and House Report No. 1311, Report on the C.I.O. Political Action Committee, March 29, 1944; and Investigation of Communist Infiltration of UERMWA, Hearings, Special Sub-committee of House Committee on Education and Labor, 1949, pp. 168-190). I was aware that all of these individuals had been charged in other ways and by other sources with being Communists or Communist supporters, or members of or affiliated with organizations listed or charged as being Communists. Most of the individuals about whom I had been questioned in my appearance before the Un-American Activities Committee on December 5, 1949, were included in a list submitted by Mr. J. B. Matthews to the House Labor Committee on September 29, 1948, at which time they were characterized as Communist or "ardent fellow travellers." This list was incorporated into the Un-American Activities Committee records (Hearings Regarding Communist Infiltration of Labor
332 Unions—Part I, *supra*, pp. 651-681; see, also, Exhibit No. 13).

The above information, among other, all of which I was aware of at the time of my appearance on December 5, 1949, was the basis for my apprehension that the questions were

intended for the purpose of eliciting information which might be used in framed-up criminal prosecutions against me under Section 80 of the Criminal Code, the Smith Act, and other federal statutes.

On the basis of the above, it appeared obvious to me that the questions asked were not innocently designed to elicit information from me, but rather a crude attempt on the part of the House Un-American Activities Committee to set a trap for me and lay the basis for the use of any answers that I might give to those questions for the institution of criminal prosecutions against me. The records of the Un-American Activities Committee disclose that this body had information which they considered of sufficient merit to issue reports thereon concerning the persons and organizations about whom I was asked. They had this alleged information prior to the time I appeared before that Committee on December 5, 1949. In fact, as indicated above, the Committee had already charged me with being a Communist, and it was apparent to me that these questions were deliberately designed to compel testimony out of my own mouth which might be used to secure evidence for the purpose of a frameup against me. This was confirmed later by the statement of Mr. Case of South Dakota, a member of the Committee, who told the House when the citation of contempt was brought up against me:

> "In the main our questions related to the very points on which the eleven persons were convicted under the Smith Act, to wit, activity as Communists in advocating the violent overthrow of the government or preparation for it." (Congressional Record, Vol. 96, No. 158, August 10, 1950, p. 12447).

I asserted my constitutional privilege against self-incrimination knowing then that the Constitution protected me from being forced to supply evidence or clues to evidence or links in a chain of evidence which might be used for criminal prosecutions against me. I was well aware at the
333 time that throughout the history of this country forces

hostile to the organized labor movement and leaders of labor unions have attempted from time to time to eliminate aggressive spokesmen for labor by framing them on criminal prosecutions. I had no intention of voluntarily participating in such a campaign of framed-up criminal prosecutions.

At no point in the questioning of Mr. Moulder or Mr. Tavenner did I refuse to answer any pertinent questions, nor did either Mr. Tavenner or Mr. Moulder direct or order me to answer any specific question. It had been called to my attention that in a prior hearing of the House Committee, the Chairman of the same Committee, Mr. Wood had stated,

> "On the question of your right to refuse to answer, if you feel that an answer to that question would subject you to some criminal prosecution, that you would endanger your own safety and personal liberty by an answer to that question, you have a right to refuse because the Constitution protects people from giving testimony that would tend to incriminate them and you would have a right to refuse to answer for that reason." (Hearings before Un-American Activities Committee, 81st Congress, 1st Session, Regarding Communist Infiltration of Radiation Laboratories, etc. Vol. 1, April 22, 26, May 25, June 10 and 14, 1949, at p. 297.)

Consequently, I believed and I had been advised that my assertions of the constitutional privilege do not represent in any sense legally or otherwise a refusal to answer the questions within the meaning of the statute under which I have been indicted. Moreover, during the course of a hearing before a House Labor Subcommittee in 1948, I had likewise asserted my privilege against self-incrimination in answer to certain questions and I was led to believe that I had the right to assert the privilege (Hearings Regarding Communist Infiltration of Labor Unions—Part 1, *supra*, pp. 155-158).

I have referred throughout this affidavit to exhibits of material which further illustrated the reasons why I asserted my constitutional privilege against self-incrimina-

tion. In the course of my testimony on December 5, 1949, I declared, "Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution primarily the First Amendment supplemented by the Fifth. This Committee will corrupt those rights." Each and every additional question asked of me by the Committee thereafter only confirmed in my mind the need
334 to reassert the privilege against self-incrimination as guaranteed me under the Fifth Amendment. And in responding to the questions I referred back time and again to this original statement setting forth my constitutional grounds for answering in the way I did.

The reasonableness of my fears as to the purpose and intent of the Committee's questions was further confirmed when Mr. Tavenner questioned me concerning my signing of the Taft-Hartley affidavits, and evinced a clear intent on his part to obtain information which might serve as a basis for prosecution under Section 80 of the U. S. Criminal Code. I indicated to the Committee that I was fully aware of this when I declared,

> "I understand an affidavit to be an affidavit, a document that is binding when one undertakes to subscribe to it. I further understand what the motives of this Committee are, to establish a beautiful frameup to hang people who try to comply with the law. O.K. The affidavit is binding and that is that."

These questions as to the Taft-Hartley affidavit fully confirm the correctness of the newspaper reports I had read prior to my appearance before this Committee, that it was the purpose of these hearings to obtain information with reference to the "validity" of the Taft-Hartley affidavit which I had signed.

I was determined that I would not be a willing party to a criminal frameup against me which powerful forces in industry and in the government itself were anxious to bring about. I was confident that the Constitution of the United States was a bulwark upon which I could rely as a protec-

tion against a compulsory, inquisitorial process out of which a criminal prosecution might flow. Throughout the entire hearing and at all times thereafter I have never wavered in my deep conviction that I would not be a party to such a frameup. I stated this to Mr. Moulder and Mr. Tavenner at the beginning of the hearing.

I am well aware that throughout the history of
335 this country, forces in our society hostile to the organized labor movement have attempted from time to time to eliminate spokesmen for labor's rank and file by framing them on criminal prosecutions.

JULIUS EMSPAK.

Sworn to before me this 16th day of December, 1950,

DAVID RATNER.

David Ratner, Notary Public, State of New York, No. 41-3211050, Qualified in Queens County, Certs. filed with N. Y. Kings, Bronx and Westchester Co. Clks., Queens, King, N. Y. & Bronx Co. Registers, Commission Expires March 30, 1951.

HEARINGS REGARDING COMMUNIST INFILTRATION OF LABOR UNIONS—PART II

(Security Measures Relating to Officials of the UERMWA-CIO)

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

EIGHTY-FIRST CONGRESS

FIRST SESSION

DECEMBER 5 AND 6, 1949

Printed for the use of the Committee on Un-American Activities

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COMMITTEE ON UN-AMERICAN ACTIVITIES

UNITED STATES HOUSE OF REPRESENTATIVES

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HEARINGS REGARDING COMMUNIST INFILTRATION OF LABOR UNIONS——PART II

(Security Measures Relating to Officials of the UERMWA–CIO)

MONDAY, DECEMBER 5, 1949

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
UN-AMERICAN ACTIVITIES,
Washington, D. C.

The subcommittee of one met, pursuant to call, at 3:30 p. m., in room 226, Old House Office Building, Hon. Morgan M. Moulder, presiding.

Committee member present: Hon. Morgan M. Moulder.

Staff members present: Frank S. Tavenner, Jr, counsel; John W. Carrington, clerk; Benjamin Mandel, director of research; and A. S. Poore, editor.

Mr. MOULDER. The committee will come to order.

Let the record show that on November 8, 1949, the Honorable John S. Wood, chairman of the Committee on Un-American Activities, ordered, authorized, and directed Morgan M. Moulder, a member of this committee, as a subcommittee thereof, to hold, conduct, and preside over hearings scheduled for this day.

Are you ready to proceed, Mr. Tavenner?

Mr. TAVENNER. Yes. I call as the first witness Mr. Julius Emspak.

Mr. MOULDER. You solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr EMSPAK. I do.

TESTIMONY OF JULIUS EMSPAK, ACCOMPANIED BY HIS COUNSEL, DAVID SCRIBNER

Mr. TAVENNER. What is your full name, please?

Mr. EMSPAK. Julius Emspak.

Mr. TAVENNER. Are you represented here by counsel?

Mr. EMSPAK. Represented? No. He is with me. He is not representing me.

Mr. TAVENNER. Are you accompanied by counsel?

Mr. EMSPAK. Yes.

Mr. TAVENNER. Will counsel identify himself for the record?

Mr. SCRIBNER. David Scribner.

Mr. TAVENNER. When and where were you born, Mr. Emspak?

Mr. EMSPAK. August 6, 1904, Schenectady, N. Y.

Mr. TAVENNER. What is your present address?

Mr. EMSPAK. 49 Cliff Side Drive, Tuckahoe 7, N. Y.

Mr. TAVENNER. What is your present occupation?

Mr. EMSPAK. General secretary, United Electrical, Radio, and Machine Workers of America.

Mr. TAVENNER. Are you also a member of the executive committee of that organization?

Mr. EMSPAK. Ex officio; yes.

Mr. TAVENNER. How long have you been an official of the UE?

Mr. EMSPAK. Since its inception.

Mr. TAVENNER. And that is how long ago?

Mr. EMSPAK. Since April 1, 1936, or 1 or 2 days either way.

Mr. TAVENNER. What have been the official positions held by you since that time in UE?

Mr. EMSPAK. Just that.

Mr. TAVENNER. Will you state for the committee, please, in a general way, what your previous employment has been?

Mr. EMSPAK. Well, Mr. Chairman, I began work in the General Electric plant in Schenectady when I was old enough to get working papers, 14 years old, in January 1919, and served my apprenticeship there, working as a tool designer and so on.

Mr. TAVENNER. I would like to ask you a few questions about the organization of the UE. How many districts are there in the United Electrical, Radio, and Machine Workers of America organization?

Mr. MOULDER. How many what?

Mr. TAVENNER. Districts.

Mr. EMSPAK. The constitution prescribes 12.

Mr. TAVENNER. Are there 12 districts?

Mr. EMSPAK. Not functioning; no.

Mr. TAVENNER. A district normally comprises what territory?

Mr. EMSPAK. It is a geographical and industrial entity that we try to develop as a district. They vary in size both as to area and membership.

Mr. TAVENNER. How many locals are there in UE?

Mr. EMSPAK. Perhaps 400. I can't give you the exact number. I just don't have it in my head.

Mr. TAVENNER. Aren't there considerably more than 400 locals?

Mr. EMSPAK. No. Perhaps you are thinking of the contracts with employers.

Mr. TAVENNER. How many rank and file members are there in the UE?

Mr. EMSPAK. We represent in collective bargaining approximately half a million, covered by collective bargaining agreements.

Mr. TAVENNER. You have persons known as organizers, do you not?

Mr. EMSPAK. Oh, of course.

Mr. TAVENNER. What are their functions?

Mr. EMSPAK. To service the local unions, organize the unorganized, help the local unions negotiate agreements, and so on.

Mr. TAVENNER. Are they pretty close to the rank and file of the membership?

Mr. EMSPAK. Yes. They usually live in the communities where they work.

Mr. TAVENNER. How many organizers are there at one time in your union?

Mr. EMSPAK. At one time?

Mr. TAVENNER. Yes.

Mr. EMSPAK. It is not a static number. I suppose 120 or 130.

Mr. TAVENNER. Are they assigned to the various districts?

Mr. EMSPAK. Yes, and locals.

Mr. TAVENNER. How are the organizers selected?

Mr. EMSPAK. Recommendations of people, local unions, individual members, and so on.

Mr. TAVENNER. The local members make recommendations?

Mr. EMSPAK. On occasions they do.

Mr. TAVENNER. Then who does the appointing?

Mr. EMSPAK. The general executive board.

Mr. TAVENNER. The executive board. How many are on the executive board?

Mr. EMSPAK. Twenty.

Mr. TAVENNER. Twenty?

Mr. EMSPAK. Plus three officers.

Mr. TAVENNER. Plus the three officers, of whom you are one?

Mr. EMSPAK. Yes.

Mr. TAVENNER. You have in your organization what are known as international representatives; have you not?

Mr. EMSPAK. Correct.

Mr. TAVENNER. Will you describe the duties of international representatives?

Mr. EMSPAK. They are in effect, in charge of a group of organizers in a given area or district, working in conjunction with the district officials.

Mr. TAVENNER. They assist in negotiating contracts?

Mr. EMSPAK. Yes. Their functions are essentially the same as the functions of organizers except they coordinate the activities of the staff and they are superior to the organizers, if you want to call it that.

Mr. TAVENNER. How many international representatives are there in UE?

Mr. EMSPAK. I can't give you the exact number. I suppose 15 or 20.

Mr. TAVENNER. How are they selected?

Mr. EMSPAK. Out of the staff. The organizers usually are promoted.

Mr. TAVENNER. And they are selected by the executive committee?

Mr. EMSPAK Yes.

Mr. TAVENNER You have also what is known as a business agent?

Mr. EMSPAK. They are employees of local unions.

Mr. TAVENNER. How are they selected?

Mr. EMSPAK. The membership of the local usually elects them.

Mr. TAVENNER. Is their appointment or selection ratified or approved by the executive committee?

Mr. EMSPAK. No.

Mr. TAVENNER. How many business agents represent the union at any one time?

Mr. EMSPAK. That I can't answer. I just don't know.

Mr. TAVENNER. Briefly, what are the duties of the executive committee, of which you are a member?

Mr. EMSPAK. Administer the affairs of the national organization.

Mr. TAVENNER. Determine policy of the organization?

Mr. EMSPAK. No; the convention determines policy.

Mr. TAVENNER. Does the executive committee have any function in the negotiating of contracts or wage disputes?

Mr. EMSPAK. No; other than whatever the framework of the collective-bargaining policy happens to be at a given time.

Mr. TAVENNER. In the adjustment of grievances which may occur from time to time, what part do the officials of the UE play in such adjustments?

Mr. EMSPAK. It depends on the nature of the grievance and what the situation may be. By and large that is a routine administrative job that the locals handle themselves. A grievance is something that develops on a job, and most of the grievances are handled within the locals. National officers as such rarely participate.

Mr. TAVENNER. Will you give examples of instances in which the officials or the members of the executive board have functioned in settling or adjusting grievances?

Mr. EMSPAK. Will you repeat that?

Mr. TAVENNER. I say, will you give me an illustration, or cite instances, of when officials or members of the executive board function in the adjustment of grievances?

Mr. EMSPAK. You mean a specific type of case?

Mr. TAVENNER. Yes, and the procedure.

Mr. EMSPAK. Well, I haven't been involved in one in several years, and I would have to search my memory to tell you that. I can go back in history and give you examples of them.

Mr. TAVENNER. Suppose you do that.

Mr. EMSPAK. Understand, I am playing entirely by ear on this one. I recall some years ago a grievance arising in a plant of the General Electric Co. involving two men in a midwestern plant, which could not be settled locally, and it finally landed in the national office. I went out there and talked with the local management, and met with our committee, and had a joint meeting of the committee and management, and called the vice president of the company in charge of manufacturing and had a long conversation with him on the phone, and finally worked out an approach to it and it was resolved. Other times we would have formal meetings set up and carry on regular discussions on the basis of forms that were made out, whether it is a dispute on wages or lay-off or whatever it might be.

Mr. TAVENNER. What other types of services do officials or members of the executive committee render the rank and file in the way of adjustment of grievances?

Mr. EMSPAK. We provide all sorts of information. We provide the information and personnel necessary to work out a given problem. That is our main job.

Mr. TAVENNER. Does that require your going on the job?

Mr. EMSPAK. On occasion we go in the field; yes.

Mr. TAVENNER. Is that frequently done, or infrequently done?

Mr. EMSPAK. Rather frequently. After all, problems are constantly pressing. That is the chief reason for the existence of the organization.

Mr. TAVENNER. The union has a contract with various employers, I suppose, in which your union is recognized as the bargaining agent in any disputes that might arise between labor and management?

Mr. EMSPAK. Yes.

Mr. TAVENNER. How many contracts, roughly speaking, do you have with employers?

Mr. EMSPAK. Approximately 1,500.

Mr. TAVENNER. That covers the work being performed in approximately how many plants?

Mr. EMSPAK. That many plants. No; I take that back; roughly that many plants, but a few more plants than that, because some national agreements cover a number of plants.

Mr. TAVENNER. In negotiating those contracts, and in the settlement of disputes arising under them, do the officers and members of the executive committee visit those plants?

Mr. EMSPAK. No; we don't go into plants, if that is what you mean. We go to local union meetings and have district meetings and national conferences with delegates from those plants, and so on, and work out whatever has to be worked out, whether a collective-bargaining agreement or an approach to a grievance settlement.

Mr. TAVENNER. Are there occasions when the officers and members of the executive committee are required to exercise disciplinary action over lesser officials and rank and file members of the union?

Mr. EMSPAK. I don't know what you mean when you say disciplinary action. We don't operate the way some or most unions do. Essentially—not essentially, but in every instance—the membership ultimately makes the decision on any proposition. Sometimes we may find ourselves where our point of view is not carried; other times it is. That goes on every day.

Mr. TAVENNER. In the event there is an infraction of the rules of your union, what action is taken or may be taken by your committee?

Mr. EMSPAK. The membership of the local union where it occurs, or area where it occurs, makes the decision on that, with a right to appeal to the convention, which takes place every year.

Mr. TAVENNER. You spoke of virtually 1,500 plants which are covered by contracts with the UE. In how many of these plants do you consider there is being done classified or restricted work for the Army, Navy, or Air Corps?

Mr. EMSPAK. I have no way of knowing.

Mr. TAVENNER. You have no way of knowing in which plants restricted work is being done?

Mr. EMSPAK. No.

Mr. TAVENNER. Is it being done in a considerable number?

Mr. EMSPAK. I just can't answer that. I can't give you a sensible answer to that.

Mr. TAVENNER. Does the UE have an official publication?

Mr. EMSPAK. Yes.

Mr. TAVENNER. What is the name of it?

Mr. EMSPAK. UE News.

Mr. TAVENNER. Where is it published?

Mr. EMSPAK. New York.

Mr. TAVENNER. How is it financed?

Mr. EMSPAK. Dues of the membership.

Mr. TAVENNER. Collected through the union?
Mr. EMSPAK. Local unions.
Mr. TAVENNER. And paid by——
Mr. EMSPAK. Paid by the individual members to the local union.
Mr. TAVENNER. And the local union——
Mr. EMSPAK. Transmits a portion of that to the general office.
Mr. TAVENNER. And the general office pays for the financing of the paper?
Mr. EMSPAK. Yes.
Mr. TAVENNER. How is the editor of that paper selected?
Mr. EMSPAK. Officially I am the editor.
Mr. TAVENNER. You are at the present time?
Mr. EMSPAK. Yes.
Mr. TAVENNER. How long have you been editor?
Mr. EMSPAK. Since we set up the union.
Mr. TAVENNER. How were you selected?
Mr. EMSPAK. By the executive board. The constitution provides that one of the paid officers be designated editor.
Mr. TAVENNER. Is the editorial policy of the paper controlled and directed by the executive board?
Mr. EMSPAK. The basic editorial policy is controlled by convention decision.
Mr. TAVENNER. Does the executive board function also in that connection?
Mr. EMSPAK. The function of the executive board is to carry out the affairs of the union between conventions on the basis of the policy decisions of the convention.
Mr. TAVENNER. Mr. Emspak, are you acquainted with Joseph Persily?
Mr. EMSPAK. Mr. Chairman, I would like to say something at this point.
Mr. MOULDER. You mean in response to the question?
Mr. EMSPAK. I will answer the question; yes, in response to the question and as a statement of position.
What I say revolves around two points, one organizationally and another as an individual. Organizationally, my job as an officer of this union is to represent the interest of the membership as they determine it at the annual conventions and at other means they have of getting together and expressing themselves. My job is to administer that aspect to the best of my ability, using one very simple measuring stick, and that is: Does a given policy or action contribute to the well-being of the membership, individually and collectively?
As an individual I would like to say one thing, and that is this: The line of questioning that counsel is developing now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am——
Mr. MOULDER. How long will this statement take, Mr. Emspak?
Mr. EMSPAK. About two or three more minutes.
Mr. MOULDER. Proceed.
Mr. EMSPAK. Everything I am, I owe to the rich heritage and tradition of this country. I do not believe that a committee of this kind,

especially in view of the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country, too.

Mr. MOULDER. I want to give you full opportunity to express yourself in answer to the question, but you are making an oration now.

Mr. EMSPAK. It is not an oration. It happens to be a very profound personal feeling.

Mr. MOULDER. What is the question?

Mr. TAVENNER. The question is: Are you acquainted with Joseph Persily.

Mr. MOULDER. How do you spell that?

Mr. TAVENNER. P-e-r-s-i-l-y.

Mr. EMSPAK. Because I have a stake in this country——

Mr. MOULDER. You are not answering the question. He asked you if you are acquainted with this man.

Mr. EMSPAK. I will answer it.

Mr. MOULDER. Are you or not?

Mr. EMSPAK. I was on the verge of answering it.

Mr. MOULDER. If you have any explanation to make you will be permitted to do so after you answer the question.

Mr. EMSPAK. Because of my interest in what is going on these days, because of the activities of this committee——

Mr. MOULDER. Are you going to answer the question?

Mr. EMSPAK. Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

Mr. MOULDER. Do you think it corrupts you to answer the question?

Mr. EMSPAK. I certainly do.

Mr. MOULDER. Why does it corrupt you?

Mr. EMSPAK. Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country.

Mr. MOULDER. You are not going to take over this committee.

Mr. EMSPAK. I don't want to.

Mr. MOULDER. And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

Mr. TAVENNER. Are you acquainted with Joseph Persily?

Mr. EMSPAK. For the reasons I stated before, I answered it.

Mr. MOULDER. Then you refuse to answer the question?

Mr. EMSPAK. No. I answered it.

Mr. TAVENNER. Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER. The record will reveal that you have not answered the question.

Mr. EMSPAK. I have answered it to the best of my ability under the circumstances.

Mr. MOULDER. Any further questions?

Mr. TAVENNER. Yes. In what capacity is Joseph Persily associated with the UE at this time?

Mr. EMSPAK. It is the same question over again. I will give the same answer.

Mr. TAVENNER. Is he an organizer in the UE?

Mr. EMSPAK. Mr. Chairman, it is the same question.

Mr. TAVENNER. You refuse to answer that?

Mr. EMSPAK. I answered it.

Mr. TAVENNER. Are you acquainted with Albert Smith?

Mr. EMSPAK. The same answer applies to that.

Mr. TAVENNER. In other words, you are refusing to answer whether you are acquainted with him or not?

Mr. EMSPAK. I have answered the question as I see the answer.

Mr. TAVENNER. Is he employed by UE?

Mr. EMSPAK. Mr. Chairman, I answered the question.

Mr. MOULDER. Could you tell us who those people are, Mr. Counsel?

Mr. EMSPAK. Excuse me, please.

(Witness confers with his counsel.)

Mr. TAVENNER. Joseph Persily and Albert Smith are the two persons whose names were mentioned.

Mr. MOULDER. Who is Joseph Persily?

Mr. TAVENNER. I thought he was connected with the UE, but I am unable to understand from this witness what the connection is, if any.

Mr. MOULDER. Do our records reveal who he is?

Mr. TAVENNER. I do not know whether they do or not, Mr. Chairman.

Mr. Emspak, has Max Helford ever been connected with UE as a field organizer?

Mr. EMSPAK. Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee. I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

Mr. MOULDER. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

Mr. EMSPAK. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——

Mr. MOULDER. Do you know them or not?

Mr. EMSPAK. That does not concern this committee at all.

Mr. MOULDER. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. EMSPAK. No. I don't think this committee has a right to pry into my associations. That is my own position.

Mr. TAVENNER. Is Max Helford at the present time a field organizer for the UE?

Mr. EMSPAK. Mr. Chairman, that is repetition of basically the same question, and the same answer stands.

Mr. TAVENNER. Was Phil Saba originally from local 155?

Mr. EMSPAK. I answered that question.

Mr. TAVENNER. And is he now a field organizer for the UE in district 1?

Mr. EMSPAK. I answered that question and that is the only answer I will give on any of my associations, for the reasons stated.

Mr. TAVENNER. Is Hank Rhine presently an international representative of the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Jack Gorelick now affiliated with the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Ernest Moyer a field organizer for UE in the Easton area?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Do you know James Lustig?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is he an international representative of UE?

Mr. EMSPAK. We can go on endlessly like this, I suppose, but the same answer holds.

Mr. TAVENNER. Is Morris Kersten an international representative of UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Fred Haug an international representative of UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Charles Newell an international representative of UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Leo Turner a field organizer in district 6?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Hugh Harley a field organizer for UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Arthur Garfield an international representative of UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Ernest DeMaio presently an international representative of UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Henry Fiering a field organizer for the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Herbert Hirschberg an international representative of UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is K. M. Kirkendall a field organizer of the UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Robert Harrison a field organizer of the UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is William Santora a field organizer of the UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Marcel Scherer an international representative of the UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Louis I. Sorti a field organizer of the UE?
Mr. EMSPAK. Same answer.
Mr. MOULDER. Same answer is your refusal to answer for the reasons given?
Mr. EMSPAK. I gave specific reasons why I felt I should not participate in this kind of questioning, and I stand by that.
Mr. TAVENNER. Is Philip V. Gelder an international representative of the UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Perez Zagorin a field organizer of the UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Carl Brant connected or associated in any way as an international representative or otherwise with UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Al Clough a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Kermit Kirkendall a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is John Thomas a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Fred Keller a field organizer with UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is John Mitchell a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Fred Sheppart a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER Is L. B. Slagle a field organizer with UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Martin Sramek a field organizer with UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Robert B. Logsdon an international representative of UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. John Bittman is a field organizer, is he not?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is William B. Elconon an international representative?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is H. M. Martinson a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Anthony DeMaio an international representative of your union?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Irene Berman an international representative?
Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Allan Bjorklund a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Thomas Foley a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Robert Kirkwood an international representative?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Lee Lundgren an international representative?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is William Mauseth a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is William Sheehan a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Phillip H. Smith an international representative with the UE?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Do you know John T. Bernard?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is he a field organizer for the UE in the Chicago district?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Peter Besch an international representative?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is T. Louis Majors an international representative?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Robert McNaughton a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is John Paradise a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Is Nick Tomasetti a field organizer?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?
Mr. EMSPAK. I answered that, Mr. Chairman.
Mr. TAVENNER. I say, have you ever been affiliated with such an organization?
Mr. EMSPAK. I answered that.
Mr. M OULDER. You mean you refuse to answer for the reasons previously stated?
Mr. EMSPAK. I answered it in the terms I did when I said as far as my associations and affiliations are concerned, that is something a committee of this kind should not pry into.
Mr. TAVENNER. In other words, you do not care to disclose whether you are affiliated with that organization?
Mr. EMSPAK. I answered that.
Mr. TAVENNER. Mr. Emspak, were you not a signer of a statement which hailed the War Department's order for commissions for Communists?
Mr. EMSPAK. Same answer.
Mr. TAVENNER. Mr. Emspak, do you know that the National Federation for Constitutional Liberties has been cited as a subversive organization by two Attorneys General, as well as by the Committee on Un-American Activities?
Mr. EMSPAK. It may have been. I don't know.

Mr. TAVENNER. Mr. Emspak, were you a sponsor of the so-called Win the Peace Conference held in Washington, D. C., on April 5 to 7, 1946?

Mr. EMSPAK. Same answer to that.

Mr. TAVENNER. You are acquainted, are you not, with the fact that the organization has been cited as Communist and subversive by the Attorney General and by this committee?

Mr. EMSPAK. Not necessarily. I don't recall.

Mr. TAVENNER. You don't recall, or you weren't concerned enough——

Mr. EMSPAK. I just don't recall.

Mr. TAVENNER. Mr. Emspak, have you ever been associated with the Civil Rights Congress?

Mr. EMSPAK. Again, basically the whole line of questions is the same, so I will say I take the same position I expressed earlier.

Mr. TAVENNER. Are you familiar with the fact that the Civil Rights Congress has also been cited as a Communist-front organization by the Attorney General?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Are you acquainted with Louis Budenz?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Louis Budenz was former editor of the Daily Worker, was he not?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. You are acquainted with the fact, are you not, that on March 18, 1947, in testimony before a committee of Congress, he identified you as a member of the Communist Party?

Mr. EMSPAK. Whatever Budenz does, don't ask me to underwrite. Sure, I am acquainted with him.

Mr. TAVENNER. You know that he did so identify you as a member of the Communist Party. Do you desire to deny it?

Mr. EMSPAK. I have no desire to express any opinion on my associations to this committee, for the reasons I stated.

Mr. TAVENNER. So you decline to deny or affirm that you were a member of the Communist Party?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Are you acquainted with James MacLeish?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is he now president of District 4, United Electrical, Radio, and Machine Workers of America?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Are you acquainted with Salvatore M. Vottis?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. That is all you care to say about that?

Mr. EMSPAK. Same answer, that is all.

Mr. TAVENNER. On July 25, 1947, Mr. Emspak, Mr. Vottis, in sworn testimony before this committee, stated that he had attended fraction meetings of the Communist Party along with you and other members of the UE. Do you deny or affirm the statement made by Mr. Vottis?

Mr. EMSPAK. I won't discuss it at all other than in the terms I have.

Mr. TAVENNER. Mr. Emspak, Mr. Vottis also testified you attended Communist Party meetings held in his home in Schenectady, N. Y. Do you deny or affirm that statement?

Mr. EMSPAK. I neither deny nor affirm it, Mr. Chairman.

Mr. TAVENNER. You have already testified that from the inception of the organization of UE News you have been its editor. I will make several rather long statements as a basis for questions which I would like to ask you.

Before August 1939 the Comintern and its affiliated Communist Parties attacked Hitler as a warmonger and nazism as barbarism. The American Communist Party and affiliates of the Soviet Communist Party demanded international boycotts and blockades.

A review of UE News for the period mentioned reveals it had the same attitude as the Communist Party toward Hitlerism. For instance, the UE News, in its first issue of 1939, praised the idea of an embargo on Germany, and on January 14 UE News carried a critical story on forced labor in Germany. On March 25 it reviewed Hitler's promises of nonaggression and deplored the rape of Czechoslovakia. But in August 1939 the Hitler-Stalin pact was signed, and Commissar Molotov on that occasion remarked that: "Fascism, after all, is a matter of taste."

A week after the signing of the pact, World War II began when the Nazis invaded Poland. The American Communist Party line quickly reversed itself, along with the Communist Parties of all other countries, and, until June 22, 1941, the Communist press was filled with attacks on American and British leaders. The war was denounced as an imperialist war and President Roosevelt became a warmonger. Aid to Britain and the other countries fighting Hitler were violently opposed, as were proposed amendments to the neutrality law which would allow England to purchase munitions.

The UE News, like the Communist Party, reversed its sentiments concerning the Hitler government and quickly took the position that the war was a profiteers' war. The UE News said that—

> Labor in America, watching the sorry sight, is watchful lest our own tories involve us in the conflict.

On September 30, 1939, the UE News, in a full-page editorial entitled "Let's Do Our Fighting Here" declared that—

> The war that is going on is no exception to the rule that wars are fought for money. American labor wants no part of this fishy war.

For the rest of the year 1939 the UE News praised the fight of the so-called isolationists in Congress, and on November 11, 1939, attacked Congress for making the United States "the arsenal of the world." The administration was condemned by the UE News as "bomb peddlers."

Mr. Emspak, could you explain why the UE News, of which you were editor at the time, followed the line of the Communist Party and expressed the same views as the Communist Parties of the world both before and after the signing of the Hitler-Stalin pact?

Mr. EMSPAK. UE News followed the line expressed by the membership at its conventions, and the line to the best interests of the working people. I think any time we can do anything at all to fight fascism and war, we are helping the people. The fact that the line followed by UE News coincided with the Communist Party line is purely coincident. Whenever we can do anything to help the laboring people, we do it.

Mr. TAVENNER. So it was a coincidence that the policy of the UE News coincided with the Communist Party line?

Mr. EMSPAK. The policy of UE News is determined by the membership at the conventions.

Mr. TAVENNER. Mr. Emspak, in 1940 the Communist Party's antiwar and isolationist line was continued and intensified. President Roosevelt was vilified as a warmonger and dupe of British imperialism. Throughout the United States the Communist Party held "peace rallies" and "keep America out of war" meetings. There were marches on Washington and numerous petition campaigns. Lend-lease was denounced as were moves to modify the Neutrality Act. Aid to Britain of any kind was opposed. One piece of propaganda, a pamphlet entitled "The Yanks Are Not Coming" which was written by a west coast Communist was of particular interest to the Communist Party.

A review of the UE News for the same period reflects that, like the Communist Party, it attacked President Roosevelt as a warmonger and charged that "the forgotten man has yielded to the man in uniform as the chief object of concern of the national administration."

On January 20, UE News said that "national defense is a gag." Also on January 20, 1940, UE officials in district 6 signed a proclamation declaring that "The Yanks are positively not coming."

Throughout the year, in numerous stories and editorials, UE News denounced United States foreign policy and aid to the allies. On February 24, 1940, UE News devoted a full page to the Communist pamphlet The Yanks Are Not Coming, and, like the Communist Party, praised the pamphlet as a history-making publication.

On June 8, 1940, James MacLeish, president of district 4 of the UE, issued a statement which claimed that—

> A war hysteria is being developed with terrific speed in the United States. The entire Federal administration, including the President, is giving leadership to this campaign.

The UE News, on July 20, 1940, attacked the Selective Service Act and on September 21, 1940, demanded its repeal.

Mr. Emspak, can you explain how it was that the UE News during the year 1940 followed the program of the Communist Party without deviation in its attitude toward the Second World War?

Mr. EMSPAK. UE News did not follow the line of the Communist Party, Mr. Chairman. UE News followed the line the membership developed for themselves in the UE.

Mr. TAVENNER. Was it the Communist membership in the UE that developed that policy which was the same as the policy of the Communist Party?

Mr. EMSPAK. We have no political tests in our organization. A member expresses any views he wants to, and one member does not make a decision.

Mr. TAVENNER. In 1940 the Communist Party also violently opposed the President's plan to lend United States arms to England and his proposal to transfer the group of over-age destroyers to Britain in return for Atlantic bases.

During 1940, while the Hitler-Stalin pact was still in effect, very little criticism of Hitler and nazism was contained in the Communist press. The Communist Party and the Daily Worker repeatedly at-

tacked Sidney Hillman and his work in the Office of Production Management and the War Production Board.

In 1940 the Communist Party was fanatically opposed to President Roosevelt and ran its own Presidential candidate, Earl Browder. On April 8 and 9, 1940, Germany invaded Norway and Denmark. The Communists defended this invasion on the ground that Norway and Denmark were provoking Hitler. On June 15, 1940, Russia invaded Latvia, Estonia, and Lithuania, and occupied these Baltic countries. The Communist Parties throughout the world hailed the invasion of the three countries by the Soviets as a great military victory for Stalin.

On September 27, 1940, Germany, Italy, and Japan signed the Axis Pact. The Communist line was that this pact was justified because of the imperialist designs of England and the United States.

During the same period, the UE News opposed the transfer of overage destroyers to England, particularly in its issue of September 14, 1940. On December 28, 1940, it attacked the President's proposal to lend England a quantity of American arms. During 1940 the UE News reflected the Daily Worker and the Communist press, printing no more than one or two small items speaking harshly about Hitler and nazism.

On October 19, 1940, the UE News attacked Sidney Hillman's work in the national-defense agencies, despite the fact that Hillman at the time was the president of another CIO union. Throughout the year 1940 the UE News attacked the President, despite its endorsement of the previous year of the third term. During the same year, like the Daily Worker, it failed to criticize the German invasion of Norway and Denmark. Strangely, there was no comment from the UE officials or from the UE News on the Soviet occupation of the Baltic countries. UE News and the UE officials at no time during the year 1940 criticized the formation of the Fascist Axis which was created on September 27, 1940.

Mr. Emspak, could you explain how the UE News adhered to the same line as the Communist Party, changing each time the Communist Party changed?

Mr. EMSPAK. Of course, I denied that it adhered to it. I told you before, and repeat again, that whatever appears in that paper, whatever appeared then or now, appears as a result of whatever the basic policy of the union as such is. It certainly is not an organ of the Communist Party, nor are your attempts to prove it so by these long statements going to succeed, because it just isn't so.

Mr. TAVENNER. The most active Communist front during the first 7 months of 1939 was the American League for Peace and Democracy. However, when the Hitler-Stalin Pact was signed in August 1939, the American League for Peace and Democracy, of which I believe you were a member, was dissolved promptly.

Immediately thereafter the Communists created the American Peace Mobilization, and the White House was picketed with signs declaring "The Yanks Are Not Coming," and the American Peace Mobilization sent numerous delegations to Washington to exert pressure on Congressmen who agreed with President Roosevelt on aid to England and the Allies.

Mr. Emspak, officials of the UE were prominent in the American League for Peace and Democracy, and when the League was dissolved

these officials promptly switched to the new Communist creation called the American Peace Mobilization.

Can you explain why the UE in this particular instance followed the same line as the Communist Party?

Mr. EMSPAK. Well, Mr. Chairman, I just don't get this. I do, of course, in a very real way, but basically you are asking the same recurring question as to whether the UE News was an organ of the Communist Party, which it isn't. It reflects the views of the UE membership, and that is that.

Mr. TAVENNER. In other words, you contend there was no influence or pressure brought to have the editorial policy of the UE News follow the Communist Party line, though it did follow it?

Mr. EMSPAK. Not only do I contend it, I assert it didn't.

Mr. TAVENNER. In 1941 the Communist Party line regarding the Second World War was a continuation of its 1940 position. The national-defense program was constantly condemned, aid to England was violently opposed, and the Communist Party and its front organizations lobbied against lend-lease, against the loan of arms to England, and every other move in and out of Congress designed to assist England and stop the Nazi world conquest.

The UE News on January 11, 1941, attacked the President's message to Congress asking for increased defense funds and aid to the Allies. Also on January 11, the UE News, on page 4, carried an article in which you attacked Sidney Hillman for serving as a member of the National Defense Advisory Committee.

On January 25, 1941, the UE News devoted a full page to the American Peace Mobilization, which had you as a member of its national council.

The American Peace Mobilization, even on the very day that Hitler attacked Russia, was picketing the White House. On June 17, 1941, just 5 days before Hitler's invasion of Russia, James MacLeish, president of district No. 4 of the UE, attacked the Defense Mediation Board, and on June 7, 1941, on page 3 of the UE News, district No. 6, Council of the United Electrical Workers, declared:

> It is becoming clearer every day that the heat is on to wind up a drive to push us into war, being conducted by big business interests who stand to profit and by the administration of Franklin D. Roosevelt and the Republican and Democratic Parties.

Mr. Emspak, can you explain how it was that you and your organization's newspaper, the UE News, followed the Communist Party line which I have outlined in my question?

Mr. EMSPAK. UE News did not follow the Communist Party line. UE News is not the organ of a foreign power. UE News is a trade-union paper governed by the policies of the membership of the union.

Mr. TAVENNER. Also prior to the date of the attack by Germany upon Russia, the Communists in the United States were in favor of strikes in defense industries. For instance, when Wyndham Mortimer, a known Communist, called a strike at the crucial North American Aviation plant at Inglewood, Calif., the Communist Party and its press gave it their full support. The President eventually ordered Government seizure of this important defense plant; and, as a result, the Communist press said that this move was outright fascism and meant the end of civil liberties in this country.

Despite the fact that Phil Murray instructed the strikers to return to work, the UE supported the North American strike. On June 14, 1941, the UE News condemned Government intervention and declared, editorially:

> As war fever reaches a new high, more and more openly the forces of the Government are being turned to the suppression of the people's democratic liberties for the announced purpose of "defending democracy."

You, yourself, proclaimed that the Government action—

> has parallel only in the blackest pages of history in this country.

Mr. Emspak, again I ask you how it was that you and the organ of your organization supported the Communists in the North American Aviation strike?

Mr. EMSPAK. We supported the North American Aviation strike, but we didn't support the Communists. I said then, and I repeat again what I said then about the use of troops in a labor dispute. Our country was not at war. It was 2 years before our country was at war.

Mr. TAVENNER. On June 22, 1941, Hitler invaded Russia, and the Communist Party, within the space of 2 hours, completely reversed the party line. The war they had been calling an "imperialist" war became a "people's" war and a "great democratic crusade." Hitler, for whom the Communists had no harsh words for the past year and a half, became a raving beast. The President, who was reviled as a warmonger on June 21, on June 22 became a great democratic leader. The Communist opposition to aid for England and the Allies was transformed into a tremendous campaign for all-out assistance to every nation lined up against Hitler. The class struggle was suspended by the Comintern, and Earl Browder publicly declared that he was willing to work with J. P. Morgan and the National Association of Manufacturers.

Mr. Emspak, the line of the UE News and of its officials after the invasion of Russia by Hitler was changed to the same line as that of the Communist Party. For instance, Local 1224, in the first issue of UE News following the invasion of Russia, passed a resolution demanding immediate aid to the Soviet Union. District 4, in the July 5, 1941, issue of UE News, went on record demanding that "the Soviet Union, Great Britain, and all others sincerely fighting the Fascist Axis be accorded the fullest assistance to avail themselves of our industrial or material resources."

On July 10 in UE News, district No. 1 council announced that it "supports without reservation all-out aid for Britain, China, and the Soviet Union."

Also, the Communist Party said that nothing must interfere with war production. Strikes were outlawed, and Earl Browder said he could see no reason why the wartime amity between labor and employers could not continue.

The UE on July 26, 1941, proposed that President Roosevelt should "immediately call a national conference of labor, agriculture, Government, and industry."

Mr. Emspak, can you explain how it was that prior to the attack by Germany upon Russia the UE supported strikes in defense plants the same as the Communist Party, whereas after the attack by Hitler upon Russia the UE, the same as the Communist Party, opposed strikes in defense industries?

Mr. EMSPAK. The UE didn't take any position on strikes as such until after Pearl Harbor. Then we made a commitment to our Government on strikes, and I was a party at the meeting of the industry-labor conference that worked out that agreement.

Mr. TAVENNER. After the attack by Germany upon Russia, the Communist Party uttered hardly a word of criticism of President Roosevelt, who, until June 22, was branded an enemy of the working class and a destroyer of peace.

On October 25 the UE News printed a three-column story asking for complete repeal of the Neutrality Act which had been advocated sometime before by President Roosevelt and opposed by both the Communist Party and the UE News.

Mr. Emspak, can you explain why this shift in the sentiment of the UE occurred regarding the repeal of the Neutrality Act?

Mr. EMSPAK. Whatever the position of the union was at the time, I suppose.

Mr. TAVENNER. On October 25, 1941, the UE News devoted a whole page to a plan developed by Joseph Selly and the American Communications Association to keep spies out of the country. Can you explain why it is that when this committee is trying to keep spies out of the country the UE refers to its efforts as "Red baiting"?

Mr. EMSPAK. Because that is what it is. It is union-busting. It is antipeople. It is everything that is bad in this country. It is more than "Red baiting." It is the first step of fascism.

Mr. TAVENNER. Do you feel that we should permit spies to come in this country?

Mr. EMSPAK. No; I don't, and you know I don't.

Mr. TAVENNER. In the latter part of the year 1941 the Communist Party from time to time admitted that England and her allies had actually been fighting fascism before Russia was invaded. However, prior to Russia's entry into the war, England was engaged in fighting an "imperialist" war, according to the Communist Party line. I think I have pointed out that the UE also followed this line.

In September 1941, the UE convention went on record and said that England was worthy of securing aid from the United States, and one of the resolutions adopted at the convention stated that "the tremendous sacrifices being made by the British, Russian, Chinese, and other peoples in this resistance to Hitlerism are sacrifices made on our behalf as well as their own, and contribute directly to the defense of our country." This resolution asked that all possible aid be given to Great Britain, the Soviet Union, China, and other nations resisting Hitlerism.

Mr. Emspak, can you explain why it was that the United Electrical Workers' convention adopted such a resolution as this, whereas prior to the Russian invasion by Germany, the UE was opposed to aiding Britain and its allies?

Mr. EMSPAK. I suppose the people changed their minds.

Mr. MOULDER. I didn't hear your answer.

Mr. EMSPAK. I said I suppose the people changed their minds. We had a convention. There was a big "hash-over," I suppose, and they came to a certain decision, and that is that.

Mr. MOULDER. Any further questions, Mr. Tavenner?

Mr. TAVENNER. I think that is about all. I would like to release the witness and call him back. I want to ask him a few questions after questioning another witness.

Mr. MOULDER. I do want to make this statement in reply to the statements you have made about this committee, Mr. Emspak. It is the function of this committee to expose communism and un-American activities. An appearance before this committee does not deny you any constitutional rights or privileges, nor have you been accused of anything. Your action before this committee discloses a flagrant attitude toward this committee.

You made reference to an investigation by this committee of a CIO union. I was at that hearing, and it was disclosed that candidates for delegates to your national convention were, by inferences they would not deny—and one, Whisner, admitted he was a delegate to the Soviet Union and that other members of the union had been sent as delegates to Friends of the Soviet Union. Just what influence did the disclosure of those facts by this committee have on the election?

Mr. EMSPAK. That hearing was held when a priest by the name of Father Rice called a member of this committee and, at the request of the priest, who was interested on a low partisan level, this committee held the hearing. Whereas the hearing was intended to have an unfavorable reaction on the election to be held, one of the people here before this committee got the second highest vote cast.

Mr. MOULDER. It was the members of the union who voted for the delegates?

Mr. EMSPAK. Yes.

Mr. MOULDER. How could this committee affect the election?

Mr. EMSPAK. By the smear job this committee attempted to do.

Mr. MOULDER. Do you think it was a smear to expose that candidates were delegates to the Soviet Union?

Mr. EMSPAK. You have Congress interfering in a local union election.

Mr. MOULDER. It was the members of the union who voted and they had a right to exercise their own judgment.

Mr. EMSPAK. They did. One of the boys here got the second to highest vote. It shows the efforts of the committee were wasted.

Mr. MOULDER. You don't want the average union member to know anything about the Communist affiliations officers of the union may have, if they do have such affiliations?

Mr. EMSPAK. I don't care, and that is not the concern of the membership. The concern of the membership is who is doing a job for them.

Mr. MOULDER. Don't you believe that the rank and file of any union should have knowledge of communistic activities within the union, and should have an opportunity to be so informed, and that this committee is performing a service when it does so expose such communistic activities within a union?

Mr. EMSPAK. Of course this committee is not performing any service for organized labor.

Mr. MOULDER. Do you think it is wrong for this committee to expose the fact that Communists are trying to take over organized labor? Are you in favor of Communist control of organized labor?

Mr. EMSPAK. I am not, and I am not in favor of a religious group taking control.

Mr. MOULDER. Don't you think if the Communists gained control of organized labor, they would lose the privileges they have to bargain freely?

Mr. EMSPAK. I don't know. That is a hypothetical question.

Mr. TAVENNER. Mr. Emspak, you recently signed a non-Communist affidavit which you filed with the National Labor Relations Board?

Mr. EMSPAK. That is right.

Mr. TAVENNER. When was this affidavit signed?

Mr. EMSPAK. The convention had a session in September and the convention made a decision that the organization comply with the Taft-Hartley requirements in order to avail itself of whatever facilities were available, and on the basis of that decision the officers signed the non-Communist affidavits. The exact date, I don't recall. We had an acknowledgment from the Board, but the affidavit speaks for itself.

Mr. TAVENNER. Since that time you have been expelled from membership on the executive board, have you not?

Mr. EMSPAK. No.

Mr. TAVENNER. You have not?

Mr. EMSPAK. You mean of CIO?

Mr. TAVENNER. Yes.

Mr. EMSPAK. No; we withdrew.

Mr. TAVENNER. You withdrew?

Mr. EMSPAK. Yes; the day before. The day that the original subpena was dated, by the way, by the purest coincidence.

Mr. TAVENNER. I assure you that must have been a coincidence.

Mr. EMSPAK. Yeah.

Mr. TAVENNER. At this time are you a member of the Communist Party?

Mr. EMSPAK. I answered that when I said the affidavit speaks for itself.

Mr. TAVENNER. Is that all the answer you care to give?

Mr. EMSPAK. I should think that is plenty.

Mr. TAVENNER. The affidavit spoke as of the date you gave it some months back, but you are not willing to speak now as to what you are?

Mr. EMSPAK. I understand an affidavit to be an affidavit, a document that is binding when one undertakes to subscribe to it. I further understand what the motives of this committee are, to establish a beautiful frame to hang people who try to comply with the law. O. K. The affidavit is binding, and that is that.

Mr. TAVENNER. That is all you have to say?

Mr. EMSPAK. I think that answers the question fully and completely.

Mr. TAVENNER. Were you a member of the Communist Party at any time before you signed the affidavit?

Mr. EMSPAK. That I will answer the same way I did about an hour ago.

Mr. TAVENNER. Have you ever paid Communist Party dues?

Mr. EMSPAK. I answered that.

Mr. TAVENNER. Have you ever signed an application to join the Communist Party?

Mr. EMSPAK. I answered that.

Mr. TAVENNER. Have you ever registered as a member of the Communist Party?

Mr. EMSPAK. I answered that.

Mr. TAVENNER. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York City?

Mr. EMSPAK. I answered that.

Mr. MOULER. You mean you refuse to answer for the same reasons you gave at the beginning?

Mr. EMSPAK. That is correct. I answered the best way I know how.

Mr. TAVENNER. You know that Mr. Budenz testified you did attend the trial of Earl Browder?

Mr. EMSPAK. Mr. Budenz testified to a lot of things. I read about it.

Mr. TAVENNER. Is it true or not?

Mr. EMSPAK. I answered that.

Mr. TAVENNER. That is all you have to say?

Mr. EMSPAK. Yes.

Mr. TAVENNER. Do you recall the film produced by UE, Deadline for Action?

Mr. EMSPAK. I do recall it very well.

Mr. TAVENNER. What was the result of the showing of that film?

Mr. EMSPAK. Apparently a major corporation in this country, in conjunction with an agency of the Government, succeeded in framing a man named Marzani and sending him to jail because that film happened to touch a tender spot with regard to the large corporations, because it happened to be an effective film.

Mr. TAVENNER. I have attempted to trace here the line of the UE News in comparison with the Communist Party line. I want to give you an opportunity to disavow, if you so desire, any of the statements I referred to from UE News, of which you are editor.

Mr. EMSPAK. Anything that is printed is printed. I am not avowing or disavowing anything. My memory is not that good that I can recall everything you read. Whatever position the UE News took reflected the views of the UE, and that is that.

Mr. TAVENNER. I would like to ask that the witness be available tomorrow morning.

Mr. MOULDER. You are excused until tomorrow morning.

I wish to say I have no religious prejudices whatsoever. This committee was not influenced by any church to conduct any investigation into local union affairs. I am strongly in favor of organized labor, and most of the members of this committee are, and we are not doing anything to hamper organized labor. We feel it is the duty of this committee to protect labor unions against Communist infiltration, and that we will try to do.

You are excused until 10 o'clock tomorrow morning.

Mr. SCRIBNER. Isn't it possible to conclude today? We have been here since 10 o'clock this morning. The fact there were other witnesses before the committee is not the fault of this witness. He was subpenaed for 10:30 this morning, and I think we should conclude today instead of adjourning and possibly getting ideas overnight to go into the next day.

Mr. TAVENNER. I take exception to counsel's statement that we desire to adjourn so as to get ideas to go into tomorrow. It was my plan to finish examining this witness after I examined Mr. Matles. That was the plan and is still the plan.

Mr. MOULDER. Could we go ahead and finish today?

Mr. TAVENNER. Yes. It is now 5 o'clock, but we can go ahead.

Mr. MOULDER. Very well.

Mr. TAVENNER. Mr. Matles, please.

Mr. MOULDER. Will you hold up your right hand and be sworn. You solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MATLES. I do.

TESTIMONY OF JAMES J. MATLES, ACCOMPANIED BY HIS COUNSEL, DAVID SCRIBNER

Mr. TAVENNER. Will you state your full name?

Mr. MATLES. James J. Matles.

Mr. TAVENNER. Are you accompanied by counsel?

Mr. MATLES. I am.

Mr. TAVENNER. Is it the same counsel as accompanied the previous witness?

Mr. MATLES. Yes.

Mr. TAVENNER. You are employed by UE and hold a position with the UE?

Mr. MATLES. That is right.

Mr. TAVENNER. How long have you been associated with the UE?

Mr. MATLES. Since 1927.

Mr. TAVENNER. What is your present address?

Mr. MATLES. 193 Clinton Avenue, Brooklyn, N. Y.

Mr. TAVENNER. Will you state briefly to the committee your previous record of employment?

Mr. MATLES. I was working as a mechanic for a number of years prior to my position with the union.

Mr. TAVENNER. When and where were you born?

Mr. MATLES. Rumania, February 1909.

Mr. TAVENNER. What position do you hold in the UE?

Mr. MATLES. Director of organization.

Mr. TAVENNER. What other positions have you held since as a member of UE?

Mr. MATLES. No other position.

Mr. TAVENNER. Have you held any other position in a labor organization?

Mr. MATLES. I was grand lodge representative of the I. A. of M., International Association of Machinists.

Mr. Chairman, may I be excused from these pictures while I am testifying?

Mr. MOULDER. Yes; if the witness so desires. No further pictures will be taken.

Mr. TAVENNER. Are you acquainted with Esther Tice?

Mr. MATLES. Mr. Chairman, I have listened to Mr. Emspak's testimony, and I am sure you are trying to save time. I do not propose to discuss here my associations or my political affiliations, under the

guaranties given to me by the first and fifth amendments to the Constitution, and I am going to try to save as much time for you as I can.

Mr. TAVENNER. You are rather jumping at conclusions, I think.

Mr. MATLES. I get it from what you have said that you are trying to save time, so I am helping you along.

Mr. TAVENNER. I am not asking you about the political affiliations of Esther Tice.

Mr. MATLES. I don't want to discuss my associations.

Mr. TAVENNER. No matter what type of business associations they may be in the affairs of the union, you will not discuss them?

Mr. MATLES. That is right, because I studied the testimony before this committee, and I find you are trying to use witnesses as finger men.

Mr. TAVENNER. Where is Esther Tice employed?

Mr. MATLES. I have answered that question.

(Witness confers with his consel.)

Mr. MATLES. Mr. Chairman, may I have 1 minute on this question?

Mr. TAVENNER. You mean to consult with counsel?

Mr. MATLES. No. I have consulted with counsel and desire 1 minute to clarify my point of view

Mr. MOULDER. Very well.

Mr. MATLES. The purpose of this hearing was announced by a representative of this committee, and that was to investigate the activities of officers of the union who have complied with the Taft-Hartley law. As we have known this committee for 12 years, the only reason you would assign yourself such police functions would be to frame us up and smear our organization. I feel Mr. Murray and Mr. Carey had something to do with persuading you to hold these hearings.

Mr. MOULDER. I think you are wrong about that. I don't know either of them. Do you refuse to answer the question?

Mr. MATLES. I have given the basis for answering the question the way I did.

Mr. TAVENNER. Which, of course, is no answer at all.

Mr. MOULDER. You can give any explanation you wish, but don't make a speech.

Mr. MATLES. Do you really think I made a speech, Mr. Congressman?

Mr. MOULDER. Proceed.

Mr. TAVENNER. Mr. Matles, have you ever been a member of the International Workers Order?

Mr MATLES. I have answered that question.

Mr. TAVENNER. When?

Mr. MATLES. Just before.

Mr. TAVENNER. What is it? Were you or were you not?

Mr. MATLES. I will not discuss my affiliations, my associations, or my political beliefs, on the grounds I stated before.

Mr. TAVENNER. Are you acquainted with the fact that that organization is cited as Communist and subversive by the Attorney General of the United States?

Mr. MATLES. I am not interested in that.

Mr. TAVENNER. Are you acquainted with that fact or not? Regardless of whether you are interested, are you acquainted with the fact?

Mr. MATLES. No; I am not acquainted with it. I read something in the newspapers about organizations being put on a subversive list by the Attorney General. I didn't pay any attention to that.

Mr. TAVENNER. In 1933 you were an organizer for the Steel and Metal Workers Industrial Union, were you not?

Mr. MATLES. My answer is the same.

Mr. MOULDER. You refuse to answer for the reasons stated, that it violates your rights provided under the Constitution?

Mr. MATLES. That is right.

Mr. MOULDER. What are those provisions, do you know?

Mr. MATLES. I believe the first and fifth amendments.

Mr. MOULDER. In what respect do they justify your refusal to answer the question?

Mr. MATLES. I am so advised by counsel.

Mr. SCRIBNER. I will be happy to give the basis for that if you wish, Mr. Congressman.

Mr. TAVENNER. Was James Lustig also employed as an organizer for the Steel and Metal Workers Industrial Union at the same time you were?

Mr. MATLES. My answer is the same.

Mr. TAVENNER. Mr. Matles, I show you a copy of the Daily Worker dated November 6, 1933, and point out to you that on page 2 under the heading "Thirty-eight workers' organizations endorse Communist Party program" your name appears as Secretary of the Steel and Metal Workers Industrial Union, along with that of James Lustig, as organizer of the Steel and Metal Workers Industrial Union. This article states:

> Only the Communist Party as the party of the working class represents the interests of the entire working population, stands squarely on the principle that the provision of adequate food, clothing, and shelter and the defense of the rights and living standards of the workers are the primary issues in this campaign.

I show you that article and ask if you still subscribe to that statement?

Mr. MATLES. Mr. Chairman, I have on many occasions discussed this subject before other congressional committees. I do not care to discuss it before this committee.

Mr. MOULDER. You refuse to answer?

Mr. MATLES. For the reasons I have previously given. I will not discuss my views, my affiliations, or my associations.

Mr. TAVENNER. Mr. Matles, Louis F. Budenz, a former official of the Communist Party of the United States, testified before the House Labor Committee that you, in 1936, were an important member of the State and National Trade Union Commission of the Communist Party. Do you wish to deny or affirm the testimony of Mr. Budenz on that?

Mr. MATLES. I wish to answer in the same manner I answered the previous question.

Mr. TAVENNER. On July 25, 1947, Salvatore M. Vottis testified before the Committee on Un-American Activities that you were a member of the Communist Party and that he had attended Communist Party meetings with you. Do you wish to deny or affirm this statement made by Mr. Vottis?

Mr. MATLES. I would like to answer in the same manner. I wish to state I have discussed this question on previous occasions before other congressional committees.

Mr. TAVENNER. On August 11, 1949, Joe Zack, also known as Joseph Kornfeder, testified before this committee that you were a member of district No. 2 of the Communist Party in New York State in

1931 and 1932. Do you wish to deny or affirm that testimony of Mr. Zack?

Mr. MATLES. I would like to answer in the same manner. I have discussed that subject before congressional committees in the past.

Mr. MOULDER. You mean you have answered the question before other committees but you won't answer before this committee?

Mr. MATLES. I fully realize the type of committee I am present before, testifying before.

Mr. TAVENNER. Did you previously testify with regard to testimony of Joe Zack that you were a member of district No. 2 of the Communist Party in New York State in 1931 and 1932?

Mr. MATLES. I am saying that during the past 12 years this and other committees of Congress have been warming up this type of question all over again, and the answers I have given before other committees are the best I can give, and I do not care to discuss the question before this committee. I am trying to save some taxpayers' money.

Mr. TAVENNER. What I am asking is whether you answered this question before other congressional committees?

Mr. MATLES. This stuff has been warmed up for 12 years and is getting tiresome.

Mr. TAVENNER. With regard to Mr. Kornfeder's testimony?

Mr. MATLES. With regard to that question.

Mr. TAVENNER. Mr. Zack also testified that upon his initiative you were assigned to be secretary of the New York Committee of the Steel and Metal Workers Industrial Union. Is that correct or not?

Mr. MATLES. My answer is the same.

Mr. TAVENNER. Mr. Zack also testified that in 1931 or 1932 you were assigned to represent the district committee of the Communist Party, New York District, to a number of Communist Party fractions such as the Communist Party fraction in the International Typographical Union, Local No. 6; the Communist Party fraction in the food workers' union; and a number of other fractions in the Communist Party within other labor unions. Do you wish to deny or affirm that testimony?

Mr. MATLES. Show me the purpose of all these questions. Is it to show on the record a smear that Mr. Murray and Mr. Carey can use in the coming elections? Are you cooperating to that extent?

Mr. MOULDER. You have an opportunity to clear yourself, to refute or deny the allegation.

Mr. MATLES. I wouldn't attempt to clear myself before this committee. I consider that an insult.

Mr. MOULDER. If what he says is not true, why don't you deny it?

Mr. MATLES. I have discussed this question before other committees, and it is tiresome, and I do not care to discuss it before this committee. I heard you say you are a strong labor man. Not when you voted for the Wood bill, and to keep the Taft-Hartley law.

Mr. MOULDER. I voted for the repeal of the Taft-Hartley law.

Mr. MATLES. You voted for the Wood bill.

Mr. MOULDER. You look up the record.

Mr. MATLES. I have looked it up. Six out of the eight members of this committee have done so.

Mr. TAVENNER. You have not answered the question.

Mr. MATLES. I answer it in the same manner I answered the previous question.

Mr. TAVENNER. You may stand aside for the present. I may want to call you back for further questions.

I now call Mr. Emspak.

TESTIMONY OF JULIUS EMSPAK—Recalled

Mr. TAVENNER. Mr. Emspak, I asked you a number of questions about your duties and about the services rendered by you and other officers of the UE to the rank and file in the matter of handling grievances, and how there were occasions when you went to the local community and worked on those problems.

Now I would like to revert again to that subject for a few minutes and ask you several other questions.

In the event of grievances, a business agent, in endeavoring to settle a dispute between labor and management, has the right, has he not, under certain circumstances, to make an inspection on the job?

Mr. EMSPAK. Not necessarily.

Mr. TAVENNER. Not necessarily?

Mr. EMSPAK. No.

Mr. TAVENNER. But he has that right?

Mr. EMSPAK. No. It depends on the type of local collective bargaining agreement that is in existence. In some cases they do, and others they do not.

Mr. TAVENNER. In the instance of the contract with General Electric does he have that right?

Mr. EMSPAK. It does not permit inspection by the business agent.

Mr. TAVENNER. It does not?

Mr. EMSPAK. No.

Mr. TAVENNER. Are not officers of UE permitted to make inspections on the job?

Mr. EMSPAK. No. What happens on the rare occasions it is used, a joint committee of management and local union representatives may go look at a specific job.

Mr. TAVENNER. Let me read you paragraph 4 of the contract:

> In those cases where it is mutually agreed by management and local representatives that an inspection of the job would be helpful in settling the case, a joint committee of local and management representatives shall be allowed to make an inspection of the job. Local representatives may include the business agent or his assistant or officers of the local.

So both the business agent and officers of the union would have that right?

Mr. EMSPAK. Possibly, but it is not automatic. Every member of the local under that provision, has the right.

Mr. TAVENNER. Mr. Emspak, the union officers also have the right, do they not, if they are so minded, to precipitate a strike?

Mr. EMSPAK. No.

Mr. TAVENNER. They may do it ostensibly for trade-union purposes, and it may be done actually even for a foreign power?

Mr. EMSPAK. No. That is a completely misleading, and a calculatedly misleading, statement. In the first place, so far as this union is concerned, no officer has a right to call a strike at any time, nor any

group of officers. This organization happens to be one where a basic decision of that kind is reserved to the members and the members alone.

Mr. TAVENNER. But that would depend on the influence the leadership has on the rank and file?

Mr. EMSPAK. It does not depend on any individual, and it depends on what the issue is.

Mr. TAVENNER. Mr. Emspak, I will ask you this question: Have you, as an officer of UE, or have any of the other officers of UE, to your knowledge, been denied the right to participate in the negotiation of wage disputes, by security officers of the Army, Navy, or Air Corps?

Mr. EMSPAK. We never have been denied that right. At least, I never have. The question has never come up.

Mr. TAVENNER. Have you ever been denied, by such security officers of the Army, Navy, or Air Corps, all access to any plants?

Mr. EMSPAK. I haven't had occasion to ask, and haven't been in any.

Mr. TAVENNER. So far as you know, you neither have been cleared nor barred?

Mr. EMSPAK. So far as I know I am just an ordinary guy who has had no occasion to go in a plant. I haven't been in a plant, I guess, for 10 years.

Mr. MOULDER. Did you testify to your previous employment before going in the newspaper business?

Mr. EMSPAK. I am not a newspaperman. I am an officer of the union, and the constitution of the union requires that one of the paid officers be designated editor in order to have it hook up to the organization.

Mr. MOULDER. Prior to your official position, where were you employed?

Mr. EMSPAK. In the General Electric plant at Schenectady until the spring of 1936.

Mr. TAVENNER. Have any other officials of UE been barred by security officers, to your knowledge?

Mr. EMSPAK. You mean national officers?

Mr. TAVENNER. Yes.

Mr. EMSPAK. Not that I know of.

Mr. TAVENNER. That is all.

I want to recall Mr. Matles.

TESTIMONY OF JAMES J. MATLES—Recalled

Mr. TAVENNER. Mr. Matles, have you been denied the right, by security officers of the Army, Navy, or Air Force, to participate in wage negotiations between management and labor at any time?

Mr. MATLES. To participate in wage negotiations?

Mr. TAVENNER. Yes.

Mr. MATLES. How could they deny me that right?

Mr. TAVENNER. I am asking, have they?

Mr. MATLES. No.

Mr. TAVENNER. Have they denied, for security reasons, your right to visit plants?

Mr. MATLES. What do you mean, for security reasons?

Mr. TAVENNER. A security officer usually investigates individuals who have access to plants where secret or classified Government work is being done; isn't that right? I am asking you whether or not the security officers have denied you the right of access to plants?

Mr. MATLES. I don't work at any of these companies. I work for the union.

Mr. TAVENNER. You are a national officer?

Mr. MATLES. Yes.

Mr. TAVENNER. And as a national officer you have never been denied that right?

Mr. MATLES. I never visit the plants.

Mr. TAVENNER. But you are an organizer and go from place to place?

Mr. MATLES. We negotiate with General Electric and with Westinghouse, but we try to stay in the air-conditioned offices if they let us. It is more pleasant.

Mr. TAVENNER. You carry on negotiations?

Mr. MATLES. I have for 14 years. I was interested in the questions about strikes prior to Pearl Harbor and prior to 1941. I want to assure you that from January 1, 1941, for 6 months, the War Department report covering the first 6 months of 1941 showed this union as having the outstanding peaceful record of not a single strike in a single defense plant taking place; that is, from January 1, 1941, for 6 months thereafter. That is an outstanding record. That has been the record of this union prior to the war, during the war, and after the war. It has an outstanding record of peaceful relations, besides an outstanding record as a union.

Mr. TAVENNER. I am not asking about that.

Mr. MATLES. You ought to be interested in that.

Mr. TAVENNER. I am; but I want an answer to my question first.

Mr. MATLES. I did answer it; didn't I?

Mr. TAVENNER. Not fully. As an organizer, you have occasion to go to the various communities in which the work of the union is going on?

Mr. MATLES. Certainly.

Mr. TAVENNER. You are there constantly?

Mr. MATLES. I am there constantly at meetings, negotiating with the companies, and so on.

Mr. TAVENNER. I am asking you whether the security officers of the Army, Navy, or Air Corps have ever denied you clearance to go on properties where secret or classified Government work was being done?

Mr. MATLES. I am not going there. They had no occasion to, and if they had occasion to I would consider it a dirty trick if they did.

Mr. TAVENNER. So they have neither cleared nor denied you?

Mr. MATLES. The same as they have not cleared or denied you. You have never had occasion to go there. You are in the same position I am in.

Mr. TAVENNER. You were speaking about the very peaceful, fine record that your union made from January 1, 1941. I am reading now from page 106 of the report of this committee, Seventy-eighth Congress, Second Session, House Report No. 1311, on the CIO Political Action Committee:

> Members of the American Peace Mobilization joined in supporting two strikes of the U. E. R. M. W. A. and aided in picketing the Pennsylvania Manufacturing Co., and the Emerson Radio Co., of Brooklyn, N. Y. (A. P. M. Volunteer, May 3,

1941, p. 4). Virgil Mason, U. E. R. M. W. A. leader at the Dolder Die Casting Co., was a member of the national council of the American Peace Mobilization.

Mr. MATLES. What is the point to that?

Mr. TAVENNER. I understood you to say your union was not involved in any strike from January 1941 for 6 months thereafter.

Mr. MATLES. The War Depratment's statistics showed our union was not engaged in a single strike in a single defense plant from January 1, 1941, for 6 months.

Mr. TAVENNER. Do you deny what I read to you?

Mr. MATLES. I refer to a War Department report that relates to defense plants. We didn't have 1,500 plants working on defense work. That is the distinction I am trying to impress on you.

Mr. TAVENNER. Was the Emerson Radio Co. engaged in defense work?

Mr. MATLES. In 1941?

Mr. TAVENNER. Yes.

Mr. MATLES. I don't know. I assume they weren't, or the War Department would have said so.

Mr. TAVENNER. Was the Pennsylvania Manufacturing Co. engaged in defense work?

Mr. MATLES. I assume it wasn't. It is a very small shop making transformers. By the way, I don't know the dates of those strikes.

Mr. MOULDER. Is that all of this witness?

Mr. TAVENNER. Yes. We will have other testimony relating to this general subject tomorrow. I am not asking you to stay over, but I am advising you of that fact.

Mr. MOULDER. The subcommittee stands adjourned until 10 o'clock tomorrow morning.

(Thereupon an adjournment was taken until Tuesday, December 6, 1949.)

HEARINGS REGARDING COMMUNIST INFILTRATION OF LABOR UNIONS—PART II

TUESDAY, DECEMBER 6, 1949

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
UN-AMERICAN ACTIVITIES,
Washington, D. C.

The subcommittee of one met, pursuant to adjournment, at 11:05 a. m., in room 226, Old House Office Building, Hon. Morgan M. Moulder presiding.

Committee member present: Hon. Morgan M. Moulder.

Staff members present: Frank S. Tavenner, Jr., counsel; Courtney Owens, investigator; Benjamin Mandel, director of research; John W. Carrington, clerk; and A. S. Poore, editor.

Mr. MOULDER. The subcommittee is in session. Who is the first witness, Mr. Tavenner?

Mr. TAVENNER. Mr. Smith.

Mr. MOULDER. What is his full name?

Mr. TAVENNER. Mr. Oscar Smith.

Mr. MOULDER. Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SMITH. I do.

TESTIMONY OF OSCAR SMITH, ACCOMPANIED BY BENNETT BOSKEY, DEPUTY GENERAL COUNSEL, ATOMIC ENERGY COMMISSION

Mr. TAVENNER. You are Mr. Oscar Smith?

Mr. SMITH. That is right.

Mr. TAVENNER. Are you accompanied here by the Deputy General Counsel for the Atomic Energy Commission, whose name is Mr. Bennett Boskey?

Mr. SMITH. Yes, sir.

Mr. TAVENNER. What is your official position, Mr. Smith?

Mr. SMITH. I am at present Deputy Director of Organization and Personnel. I think in some of the documents that appear in this matter my title appears as Director of Labor Relations. That was my position in the past, but my duties have recently been expanded.

Mr. TAVENNER. That is of the Atomic Energy Commission?

Mr. SMITH. That is correct.

Mr. TAVENNER. Mr. Smith, we have been engaged here in a hearing relating to the leadership in the UE union; that is, the national organization. Where there is work done at the instance of the Atomic Energy Commission in a plant in which the UE has a contract, is it

the practice of your Commission to investigate, or to bring under security regulations, the officers of the national union?

Mr. SMITH. I will have to answer that in this way: The UE has appeared as a bargaining agent in only one instance in a major atomic-energy installation.

Mr. TAVENNER. Speak a little louder, please.

Mr. SMITH. That was Schenectady. We do buy a good many supplies from various concerns all over the country. All kinds of unions, including possibly UE, may be in those suppliers' plants. They are not Government plants, however, and in those instances we have not interested ourselves in the labor relations of the suppliers.

At Schenectady we have interested ourselves and have taken certain steps in regard to bargaining with UE at that installation.

Mr. TAVENNER. What position did the Atomic Energy Commission take with regard to the bargaining agency in the instance you referred to?

Mr. SMITH. We took several steps. At the outset, as we first got into the problem, we issued a directive to the General Electric Co. to maintain the status quo and that they were not to recognize UE in a new installation that at that time had no employees, pending the time we could explore the question.

We then invited UE to clarify the question that seemed to us to exist. When they declined to do this, we felt we had no alternative than to direct General Electric to cease dealing with them at the existing plant at Schenectady.

Mr. TAVENNER. What was the name of that plant?

Mr. SMITH. In its entirety it is called the Knolls Atomic Power Laboratory.

I think I should describe our contractual and physical arrangement up there. The Manhattan Engineer District, prior to the time the Atomic Energy Commission took over, entered into a contract with General Electric Co. for certain atomic-energy work. The work involved the operation of a plant at Hanford, Wash., for the manufacture of plutonium. Included in the same contract was certain work to be performed at Schenectady. The work to be performed at Schenectady envisaged that certain new facilities would be built, and also authorized General Electric to begin work immediately at Schenectady in its own plant within restricted areas marked off within the plant.

The Manhattan District then acquired its own plant at Schenectady, the Peek Street laboratory. At the time the Atomic Energy Commission took over, the Peek Street laboratory had been acquired, but there were no operations in it. The small operation within the General Electric plant was then moved to the Peek Street laboratory.

So, at the time of our action, which covered several months in 1948, with final action on November 1, 1948, we had what was known as the Peek Street laboratory, which was a Government-owned building, fairly well isolated by itself in Schenectady; a small amount of work still going on in restricted areas in the old plant; and new facilities under construction, with some parts completed, ready to move people from Peek Street to Knolls.

Mr. TAVENNER. The employees it was proposed to use in that plant were members of what union?

Mr. SMITH. United Electrical Workers.

Mr. TAVENNER. Was the question raised by the Atomic Energy Commission as to the loyalty of members of the national organization of UE; that is, its officers?

Mr. SMITH. Well, I wouldn't say that we raised the question. The facts were that, long before that, we had established a firm policy, which had been made known in a great many ways. It had been made known in a report to the Joint Committee on Atomic Energy which we filed January 16, 1948. It was made known publicly in hearings conducted in March 1948, in which our report on labor problems was the initial exhibit. It was made known in various communications to the National Labor Relations Board. The policy was that we considered it well settled that we did have to look into the question of assuring ourselves that the people who represented employees on classified work were people loyal to the United States.

The question as to the UE came up in this way: This committee, the House Committee on Labor and Education, and a great many other organizations, had from time to time conducted certain investigations of the UE, and there was available a large amount of public information, matters of public record that concerned the associations and affiliations and loyalty of these men who headed this organization, both locally and nationally.

We felt that question had to be looked into and cleared up satisfactorily if they were to represent people at Schenectady and we were to discharge our responsibility under the Atomic Energy Act.

So, when the new plant was ready to go into operation, we directed General Electric to remain in statu quo, and said we wanted this question cleared up before there was any recognition of this union as the bargaining representative of any persons to be employed by it at the new plant.

Mr. TAVENNER. In other words, it was the policy of the Atomic Energy Commission to satisfy itself regarding the loyalty of the officers of the bargaining agency?

Mr. SMITH. That is correct. Maybe, to give you the full picture on that, I ought to give a little of the background of the situation that existed at that time.

Our industry is an industry born in secrecy. In the air of secrecy under which the industry developed, a great many problems arose. There were restrictions on meetings. Work itself was highly compartmentalized. One man was not supposed to know what the man next to him was doing.

The Manhattan Engineer District had an agreement with the Congress of Industrial Organizations, the American Federation of Labor, and the National Labor Relations Board that all questions of union recognition would be deferred in this industry until some of the more critical problems essential to the prosecution of the war were gone into.

In 1946, immediately before the Atomic Energy Commission took over, the Manhattan Engineer District decided that, on a test-tube basis, they would try permitting the organization of unions in Oak Ridge, and notice was given of that to the Congress of Industrial Organizations, the American Federation of Labor, and Mr. Herzog of the National Labor Relations Board.

The Atomic Energy Commission took over on this test-tube basis at Oak Ridge, with unions excluded at other atomic energy installations, but with a firm commitment to review the situation as far as other installations were concerned, and it was in this review that the problem at Schenectady arose.

The Commission first concluded, based on reasons probably removed from the question of UE or security or anything else, that there was a need for unions in this industry, and that we did need collective bargaining, and that if the industry was to become in the future a part of the fabric of this country, it would have to be worked out as in other industries. That was announced in letters to the Congress of Industrial Organizations, the American Federation of Labor, and atomic energy contractors.

The action at Schenectady was a dual action. On the one hand the Commission said in substance to General Electric Co.: "We are authorizing you to recognize unions. We have written to Mr. Herzog, Chairman of the National Labor Relations Board, releasing him from his agreement to postpone NLRB cases." Then we said to General Electric: "However, at Schenectady all this public information raises this question as to UE. Don't recognize them for the new installation at Schenectady until we can probe into it."

Mr. TAVENNER. So that it was and became the policy of the Atomic Energy Commission to look into the question of security as to officials of national unions having bargaining agency contracts?

Mr. SMITH. That is correct.

Mr. TAVENNER. Will you state why the Atomic Energy Commission considered it important to look into the question of security as to the officers of national bargaining agencies, such as, for example, the UE, as distinguished from those who are physically working in the plants?

Mr. SMITH. Yes. First, to answer that generally, there are a great many documents which I suppose might be looked upon as official publications of the Communist Party. One of the other congressional committees assembled a great many of them—the Foreign Affairs Committee's subcommittee under the chairmanship of Representative Bolton several years ago—which makes it clear it is an objective on the part of the Communist Party to infiltrate trade-unions; to place Communists in key positions in unions if it is possible for them to accomplish this; and in such positions, according to these official documents, to win the confidence of workers. Obviously the reason for winning the confidence of workers is so that they can use the trust that is bestowed in them, if it becomes necessary, in order to follow the dictates of the Communist Party and the party line.

Moving from that premise on, the next thing is the important part that is played all the way up the line by the various officers in positions of authority above the local. I suppose the thing that brings this home more in our own industry is the fact that we have many installations where the question of continuity of production is extremely important, not only from the standpoint of the need of production, but from technical requirements of the process.

President Truman, about a year and a half ago, appointed a committee to study this matter and to make recommendations to him. That committee consisted of three very prominent men in the labor-relations field: William H. Davis, of New York; Edwin E. Witte, of

the University of Wisconsin; and Aaron Horvitz, an arbitrator, of New York.

They wrote a report to the President which has since become what we might call the charter for labor relations in our industry. In their report they have this to say on the importance of national officers and also high-level representatives of management:

> Another labor-management technique of proven value in private industry is a well-planned procedure which brings the experience and the responsibility of the very highest levels of management and labor to bear upon the settlement of all critical disputes. Procedure to this end needs to be carefully planned, so as to leave with local representatives primary responsibility for good relations at each particular installation, and yet make available in crises whatever wider experience and heightened responsibility may exist at the higher levels of management and labor, as well as the relatively detached judgment of individuals who have not themselves been directly involved in the earlier stages of the dispute. All of these considerations are made especially important in the field of atomic energy by the overwhelming responsibility to maintain continuity of production. We therefore recommend——

And this is set out and is the recommendation they have made for the industry, and it has been largely accepted:

> That, fully recognizing and safeguarding the primary responsibility of local representatives for sound and stable relations at each Government-owned, privately operated atomic-energy installation, provision be made for bringing to bear upon the settlement of critical disputes all available experience and responsibility of individuals at the very highest levels of management and labor.

In short, I think it boils down to this. It is hard to find the words to express how important it is in our industry, and we believe that we have to have higher representatives of management and higher representatives of labor available to assist in resolving disputes that might result in the interruption of that continuity.

Mr. TAVENNER. Then I assume it is principally for that reason that the Atomic Energy Commission considers it vital to the national defense that the loyalty of persons occupying positions as officers of a bargaining agency be checked upon?

Mr. SMITH. That is correct. What I have touched on here is the affirmative situation. Looking at it from the other standpoint, if we actually had in these positions, as the men to whom we might have to come to resolve disputes that might result in the interruption of these terrifically important activities, representatives of a foreign power, you could have very serious adverse action instigated by them in the opposite direction.

Mr. TAVENNER. Do you recall whether or not, under the contract between UE and General Electric, the officers of UE would under any circumstances have the right of access to restricted working facilities?

Mr. SMITH. The contract covers all the GE plants. It sets up a grievance procedure applicable to all those plants. I think I should make it clear at this point that we did not feel, and there was not involved in our decision, any question of espionage or anything like that arising through any rights of inspection, because in fact we had not permitted inspection by outside parties at Schenectady.

As to the arrangement itself, I have here a copy of the contract between UE and General Electric, and the particular clause involving the investigation of grievances reads as follows:

> In those cases where it is mutually agreed by management and local representatives that an inspection of the job would be helpful in settling the case, a

Joint committee of local and management representatives shall be allowed to make an inspection of the job. Local representatives may include the business agent or his assistant or officers of the local.

At Schenectady the business agent is a national officer of some kind of the international, so the local and international officers up there are rather closely tied together.

Mr. TAVENNER. As the result of the policy of the Atomic Energy Commission, what action was taken at Schenectady?

Mr. SMITH. We told General Electric they were not to recognize UE at the new plant. We then invited the UE to come in and explore the question with us.

Mr. TAVENNER. What do you mean by "explore" the question?

Mr. SMITH. We said: "There is a lot of public information that raises a question in our mind. We invite you to come in, and we want certain data from you."

I think if I read a paragraph from our letter it would answer the question. We actually wrote them two letters. The first was not answered for a couple weeks, and we wrote another letter. The first letter said:

The assertions in your letter do not even begin to answer the serious question that has been raised concerning the absence in various of the UE officers of the requisite adherence and loyalty to the interests of the United States. If the officers of UE desire, the Commission will afford them every opportunity to participate in a fuller exploration of this issue. It should be understood, however, that the AEC would expect the UE officers to be prepared to give full and candid statements concerning present or past affiliations of any kind with the Communist Party or Communist-dominated organization. In addition, the same personnel data will be requested of the UE officers as has been furnished by employees and by various officers of other unions who represent employees in the atomic energy program.

That letter is dated October 6, 1948. After a couple weeks, that letter not having been answered, we wrote another on October 22, 1948.

Mr. TAVENNER. Let me interrupt you there a moment. It was your purpose merely to subject the officers of the union to the same type of a check on loyalty as were individual members who might be working in the plant. Is that a correct statement?

Mr. SMITH. Not necessarily identical. I think there is this difference: Individual members working in the plant have access to restricted data. As such, there is a standard set up that they must meet, and certain procedures which must be followed, including a special investigation by the FBI, before they are authorized to have such access. In the case of union representatives, it probably adds up this way: People very close to the local and handling the day-to-day affairs of the local may also, in order to do their job, need some access; and if that were the situation, there would be the requirement that the procedure be identical with that in the case of an employee having access.

There is no statutory requirement that we follow the procedure of FBI investigation and so forth if access to restricted data is not involved, and we would feel we had a right to adapt our procedures as warranted in the situation. Actually, we did not set up a procedure in detail here. We might have followed the identical procedure with specific employees, or we might have followed some other procedure. In fact, when they would not explore it at all, we did follow a different procedure. We just directed GE to cease bargaining

with them at Peek Street. Before we would actually deny a particular employee access to restricted data, we would probably complete the investigation and go through the full procedure.

Mr. TAVENNER. All right. I interrupted you.

Mr. SMITH. On October 22, 1948, we wrote a second letter. I will read a couple of paragraphs from it:

> In my letter of October 6, the Commission proffered to the officers of UE an opportunity to participate in a resolution of this matter. Such participation, as indicated in that letter, would necessitate the furnishing by the officers of UE of the same personal data as has been furnished by all employees engaged in atomic energy work and by various officers of other unions, including full and complete statements as to their associations and affiliations.

As a matter of information there, we have a particular form which each employee fills out as the basis for the initiation of any action to investigate the loyalty question. A great many union representatives have filled that form out for us, many of whom we did not process on an FBI background investigation basis because they were not men who would have access to restricted data.

We went on and said:

> The Commission wishes to emphasize that it intends to move promptly on this matter. In the event that the serious question that exists is not satisfactorily answered in the manner indicated above, the Atomic Energy Commission intends to direct the General Electric Company to withdraw and withhold recognition from the United Electrical, Radio, and Machine Workers of America as the bargaining representative of any employees engaged on work at AEC-owned or AEC-leased installations in the Schenectady area or engaged on atomic work which is defined as classified by the AEC and being performed by the General Electric Co.
>
> * * * * * * *
>
> In order that the employees who will be affected by this action may be fully advised of the facts and of the consideration given to this matter by the Commission, we are directing the General Electric Co. to place a copy of this letter in the hands of every employee engaged in classified atomic energy work at Schenectady.

Now, that letter was responded to by Mr. Fitzgerald under date of October 26, 1948, at some length. I say it was responded to. I don't mean to say by that that we considered the reply responsive. Quite the contrary. Mr. Fitzgerald expressed some views he had concerning the Atomic Energy Commission, but did not offer to explore the issue, nor did he offer to answer the questions we had asked as to affiliations of officers of this organization. Consequently, we directed the General Electric Co. to cease recognition of UE at the existing facility, Peek Street. Our directive was broad enough to include a few other minor operations at Schenectady where a few people were engaged on Commission work.

Mr. BOSKEY. I might add, the letters from which Mr. Smith has been reading are part of the public record and have been printed in the Fifth Semiannual Report of the United States Atomic Energy Commission.

Mr. SMITH. In our final letter to GE, as in our original letter to GE, we said this:

> Further, we take this opportunity again to make it clear that the Commission does not object to General Electric Co. extending recognition as bargaining agent for atomic-energy workers to any labor organization whose officers have met the requisite standards in respect to full and unqualified adherence and loyalty to interests of the United States.

And, as a matter of fact, while this proceeding was going on, the National Labor Relations Board did certify a plumbers' union at Knolls. Also, the metal-trades department of the American Federation of Labor was certified at Hanford and now has a contract with the General Electric Co. at Hanford.

Mr. MOULDER. Do you mean to say all the unions other than UE agreed to follow the rules of the Atomic Energy Commission?

Mr. SMITH. I can't say all of them. We really only have two unions active in our industry. One is the metal-trades department. That includes the International Association of Machinists, which is not affiliated with the A. F. of L., but which, in the case of our industry, has joined with the metal-trades department in our plants. The other is the Chemical Workers of CIO. Both the metal-trades department and the Chemical Workers have responded to all requests we have made for submission of personal data or anything else, and have fully met whatever standards we have felt were necessary in this connection. No other union has refused. They just haven't been around our installations.

Mr. TAVENNER. That is all I want to ask you, unless you think of something else that might have a bearing on our discussion.

Mr. SMITH. I don't think of anything else.

Mr. BOSKEY. As you know, the United Electrical, Radio, and Machine Workers filed suit in the United States District Court for the District of Columbia, seeking to enjoin the action of the Commission. The district court dismissed the suit. The case is now pending in the court of appeals, and as a result of several extensions of time to file the appellant's brief, granted at the request of the United Electrical, Radio, and Machine Workers, the case is still pending and probably will be for a few months more.

Mr. TAVENNER. What specific authority is there for your taking the position that you have with regard to the requirement that officials of a union like the UE should comply with security regulations?

Mr. SMITH. I think that is a legal question.

Mr. BOSKEY. It is elaborated somewhat in the brief the Government filed in the district court. The Commission operates pursuant to statute, pursuant to the McMahon Act, the Atomic Energy Act of 1946.

Apart from any general considerations which, in the absence of statute, might enable the Government to protect itself for security reasons where classified work is involved, the Commission also has certain provisions in the statute.

Section 1 of the Atomic Energy Act of 1946 contains a very important declaration of policy, which declares that the paramount objective at all times is to assure the common defense and security. That objective is very much in the Commission's mind in all its activities.

In addition, in defining in section 1 of the act, the major programs it was the desire of Congress the Commission should carry out, the act provides for—

> A program for Government control of the production, ownership, and use of fissionable material to assure the common defense and security and to insure the broadest possible exploitation of the fields.

The act also, as you know, has a provision relating to the control of information, section 10, which states:

> It shall be the policy of the Commission to control the dissemination of restricted data in such a manner as to assure the common defense and security.

In other words, running throughout the entire act is this thread of common defense and security. To that the Commission must always look.

In addition, in section 4 of the act, which relates to the operation of our main production facilities for the production of fissionable material and research done in connection therewith, there is a specific provision authorizing the Commission to carry out those functions by contract. The act states that in any such contract the Commission shall insert a provision which requires the contractor to comply with all security regulations which may be prescribed by the Commission.

In view of these very pertinent parts of the Atomic Energy Act, it was the Commission's view, and the view of the Department of Justice and of the District Court of the United States for the District of Columbia, that there was ample authority in law for the action which the Commission took in this case.

Mr. MOULDER. Thank you very much for coming here. There is not the slightest doubt in the minds of the members of this committee as to the very effective and efficient manner in which the Atomic Energy Commission has protected the national security in the functions of that Commission.

As I understand, you wish to emphasize here in particular the precautions and careful work that you are doing to protect the defense and national security in connection with the officers and representatives of organized labor?

Mr. TAVENNER. That is one point. You will recall the committee undertook at the time of the Franey hearing to make a study and investigation of security measures in plants where Government classified work is being done.[1]

Mr. MOULDER. You should be complimented.

Mr. TAVENNER. Colonel Barlow, please.

Mr. MOULDER. Do you solemnly swear the testimony you will give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Colonel BARLOW. I do.

TESTIMONY OF COL. ERNEST A. BARLOW

Mr. TAVENNER. Will you state your name for the record, Colonel?

Colonel BARLOW. Ernest A. Barlow.

Mr. TAVENNER. What is your official rank and position?

Colonel BARLOW. Colonel, General Staff Corps. I am Chief of the Security and Training Corps, Intelligence Division, Headquarters, Department of the Army.

Mr. TAVENNER. In functioning in that capacity, does there come under your control the matter of security measures in plants where classified or secret Government work is being done?

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[1] Soviet Espionage Activities in Connection With Jet Propulsion and Aircraft, June 6, 1949.

Colonel BARLOW. Policy with regard to the degree of investigation and the standards for clearances comes within the purview of my office.

Mr. TAVENNER. Will you explain the procedure that is used in your security functioning?

Colonel BARLOW. For any classified contract entered into by any procurement service of the Department of the Army, prior to entering into the contract we have a procedure for the clearance of the facility.

The key personnel—that is, the directors, officers of the company, special consultants, draftsmen, individuals of that nature—make out a personnel-security questionnaire, and thereafter these members of the company are given what we call a national-agency check. In other words, the files of the Army, Navy, Air Force, and Federal Bureau of Investigation, and in many instances the files of the Un-American Activities Committee, are used to ascertain if there is any derogatory information contained in the file about any of the key personnel. If none is found, we write a letter to the procurement service and state there is no objection, from a security standpoint, to their entering into a contract with "A" for whatever purchases they wish to make; and after that the company itself enters into an agreement with the procurement service in which it assumes responsibility for classified information in that plant and agrees not to permit the unauthorized use of this classified information.

That is pertaining to all classified contracts of whatever degree of classification entered into by the Department of the Army.

Then the question of the clearance of individual employees comes up. For secret and top secret contracts, each individual must fill out a personnel-security questionnaire, and the Army commands then investigate the individual's loyalty, integrity, discretion, and the like.

The minimum amount of investigation consists of a check of the local Army files, local Navy files, local FBI files, local police records, and the like. However, as a usual procedure, the Army commander goes further and makes a personal background investigation. In 70 percent of the cases they make a personal-background investigation. That is for secret and top secret. If they find no derogatory information, a letter of consent is issued for that particular person to be employed.

Mr. MOULDER. What do you mean by a personal-background investigation?

Colonel BARLOW. National-agency check, local-agency check, and interviews with individuals back in the home community of the individual under consideration. If the Army commander, in his investigation, discovers any derogatory information, he is not permitted to issue a letter of consent, but he refers the complete case to a board set up in the office of the Army Provost Marshal General. That board reviews the case and makes a decision.

Mr. TAVENNER. You have spoken of investigations conducted by the Army. Is there a separate procedure where the Navy and Air Force are involved, or does the Army do that work for the armed services?

Colonel BARLOW. At the moment the Army conducts investigations for both the Navy and the Army for secret and top-secret contracts. The Air Force conduct their own. At present the Navy is attempting to secure sufficient funds to set up an investigative organization that

can handle all naval classified contract work; but this was a carry-over from a wartime situation where the Secretary of the Navy delegated to the Secretary of the Army clearance of personnel on Navy contracts.

Mr. TAVENNER. In the situation where you have a bargaining agency such as, for example, the UE, in its contractual relationship with, say, General Electric, does the Army subject the officers or any of the personnel of the national union to security regulations?

Colonel BARLOW. Not by reason of the individual's union position. We only investigate them if they are going to have access to classified information in that plant.

Mr. TAVENNER. That is, if an officer of UE expects to go into the working facilities of a plant, then you would conduct an investigation?

Colonel BARLOW. If he is going to see classified information in that plant.

Mr. TAVENNER. What about the situation where he merely goes into the plant for the purpose of inspecting the job, without seeing any maps or designs of specifications?

Colonel BARLOW. He is not investigated.

Mr. TAVENNER. He is not investigated?

Colonel BARLOW. He is not investigated. At each plant the procurement service that entered into a contract with that plant has a representative, one of whose jobs is to see that the facility abides by that security agreement, and it is up to him to insure that security in maintained. We require, insofar as visitors are concerned, that the visitors be accompanied at all times on a tour of the plant to see to it that they do not see classified information.

Mr. TAVENNER. I am not speaking of a visitor in a general sense, but rather as an officer of the national organization which may be engaged in the settlement of some grievance dispute, in which case he would have the right to inspect the job under certain circumstances. Have you ever conducted a security investigation of such an officer of the national union?

Colonel BARLOW. I can't authoritatively answer that question. Actually, in my own opinion—the Army representative at that plant engaged in that contract, plus the plant management—it would seem, between the Army plant inspector and the agreement signed by the plant, that, if a union official had to see classified material in connection with his union activity, he would be investigated. However, I have no personal knowledge on that score.

Mr. TAVENNER. Aside from the right of an official of the national union to enter a classified working facility, is it the practice of the security division of the Army to conduct investigations of officers of the national union who have certain administrative duties and control over and in regard to the personnel of the union, and who have certain duties in regard to the settlement of grievances?

Colonel BARLOW. It is not the practice of the Army. As a matter of fact, I don't think the Army has authority to investigate any civilian per se unless he is working for the Army.

Mr. TAVENNER. In other words, officials of a union such as UE would not be investigated under your practice and procedure?

Colonel BARLOW. No, sir; not unless he were an employee as well as a union official.

Mr. TAVENNER. Did I understand you to say you consider you have no authority to investigate civilians?

Colonel BARLOW. It is my opinion the Department of the Army has no right to investigate any civilians unless they are employees of the Department of the Army.

Mr. TAVENNER. Then you conclude that under the regulations governing your Department you do not have authority to investigate, say, officials of UE who are not employees?

Colonel BARLOW. That is correct.

Mr. TAVENNER. Do you know of instances in which the Army, the Navy, or the Air Force are engaged or have let contracts involving secret or classified defense work to plants over which the UE has a bargaining agency contract?

Colonel BARLOW. I don't believe I can authoritatively answer that, but I am certain the Department of the Army has classified contracts with the General Electric Co.

Mr. TAVENNER. Do you have available copies of the security regulations which you could leave with this committee?

Colonel BARLOW. I have Department of the Army Memorandum No. 380–5–10, dated 2 April 1948, with two changes, which sets forth the policy with respect to the clearance of employees. I do not have the regulations regarding the facility.

Mr. TAVENNER. Could I ask you to make available to us the regulations covering the facility as well as the employees?

Colonel BARLOW. The clearance of employees and facilities at the moment is under study by the Munitions Board of the Department of Defense, and they are writing completely new policy regulations for the whole thing. I am afraid anything I would give you right now would be certainly not the thing that will be in effect 2 weeks from now. I have a copy of the old security agreement, but it is being revised along with everything else.

Mr. TAVENNER. Will you give us a copy of the revised material when the revision is completed?

Colonel BARLOW. I will.

Mr. TAVENNER. And also a copy of the old regulations?

Colonel BARLOW. I will.

Mr. MOULDER. Thank you very much for your attendance. Any further witnesses?

Mr. TAVENNER. Mr. Chairman, this concludes the testimony at this hearing. You will probably recall that various members of the committee indicated, as I suggested a moment ago, at both the open and closed session at which the Franeys were heard on June 6, 1949, that further investigation should be made of security measures in force at plants working on secret or classified Government defense projects. Further investigation has been made from time to time.

It has been developed in this hearing that certain officers of national unions which are bargaining agents under contracts with plants where secret or classified defense work is being performed are not subjected to security regulations in all cases.

The testimony introduced at this hearing discloses the duties and powers of certain officials of UE in negotiating contracts, in the adjustment of grievances, in the administration of the affairs of the union, and in the right in certain instances to inspect jobs, though located in classified working facilities.

The Atomic Energy Commission has recognized the risk involved to national security in failure to subject such officials to the same

security requirements as those normally dealing with classified material.

Mr. MOULDER. I understand they do have such rules and regulations.

Mr. TAVENNER. They do have cases where those security standards have not been met, as was the case with UE.

The Security Section of the Army rather takes the view, if I understand the testimony correctly, that it has no authority under the law to subject the officials of such an organization to any type of security standards except in instances where an official in performing his duty is required to know or to see classified material.

Without some type of security standards applying to officers of the type and character of officers in a union which has a bargaining agency contract, such officers, if actually disloyal to the United States, apparently would have opportunity to seriously jeopardize the national defense.

It is suggested, therefore, that you consider reporting this matter to the committee as a whole for its opinion as to whether additional investigation is desired, and whether it desires to make recommendations for legislative enactment.

Mr. MOULDER. As is in effect with the Atomic Energy Commission?

Mr. TAVENNER. Or something similar.

Mr. MOULDER. Is that all?

Mr. TAVENNER. That is all.

Mr. MOULDER. The committee stands adjourned.

(Thereupon the subcommittee adjourned.)

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381 **Emspak Exhibit No. 2**

N. Y. Times, November 17, 1949

HOUSE GROUP CALLS TWO U. E. LEADERS

Head of Ousted Union Accuses Committee on Un-American Activities of 'Smear'

The House Committee on Un-American Activities disclosed last night in Washington that it was looking into the validity of non-Communist affidavits filed by officers of the left-wing United Electrical, Radio and Machine Workers. The union was expelled from the Congress of Industrial Organizations last week on the charge that it was Communist-dominated.

A spokesman for the Congressional investigating committee said it had issued subpoenas for the appearance of Julius Emspak, UE secretary-treasurer, and James J. Matles, the union's director of organization, before a subcommittee on Nov. 29. The spokesman indicated that the committee wanted to question the two officials about the affidavits they submitted to the National Labor Relations Board under the provisions of the Taft-Hartley Act.

Albert J. Fitzgerald, president of the expelled union, charged that the committee's renewal of interest in his union was designed to "smear the UE" and thus help the new electrical union set up by the CIO, the International Union of Electrical, Radio and Machine Workers.

Noting that the new group was scheduled to open its first convention in Philadelphia on Nov. 28, Mr. Fitzgerald asserted that the initiative for the committee's action had come from Philip Murray, CIO president, and James B. Carey, chairman of the administrative committee of the new union. Mr. Carey, who is national secretary-treasurer of the CIO, was a founder and first president of the older electrical union.

Committee aides said the subpoenas had been issued three weeks ago. This was just after the union had filed affidavits

with the NLRB and two weeks before the CIO revoked its charter. The union was unable to participate in NLRB elections until it submitted the non-Communist oaths. The new union has asked the NLRB to hold votes in General Electric, Westinghouse and other large electrical companies to determine which union the workers want to represent them.

In Elizabeth, N. J., a group of supporters of the ousted union who had seized control of the offices of Local 436 restored possession to pro-CIO forces after a vote among 674 employes of the General Instrument Corporation resulted in a thirty-to-one margin in favor of affiliation with the new CIO union.

Elsewhere in the New York-New Jersey metropolitan area conflicting reports on the extent of the secession movement were given by spokesmen for the rival groups.

Milton Weihrauch, district head of the new union, said locals with 25,000 members in New York and northern New Jersey had voted to join the CIO group. He estimated the original membership of the older union in this area at 60,000.

A spokesman for the old union said it had the support of locals with 50,000 members out of a total in the district of 68,000. He asserted that 3,000 employes in the Phillipsburg, N. J., plant of the Ingersoll-Rand Company had quit work at 2 P. M. to "protest interference" by the new union in contract negotiations. The workers accused the company of "stalling" on demands for higher wages and increased pensions because of pressure for recognition from the CIO group.

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382 **Emspak Exhibit No. 3**

N. Y. Times, November 23, 1949

JUSTICE ACTION DUE ON NON-RED OATHS

Grand Jury May Get Cases—U. S. Reported Not Waiting for High Court Ruling

By Louis Stark
Special to The New York Times

Washington, Nov. 22—The Department of Justice is preparing for speedy action on some cases referred to it by the National Labor Relations Board involving union officials who have signed non-Communist affidavits under the Taft-Hartley law.

It was reported today that an important step would be taken within thirty days. Justice Department officials declined to tell what the step would be. In other quarters it was felt that some cases might be presented to the grand jury.

Whatever the action, it was emphasized that the department was not waiting for rulings by the Supreme Court on two pending cases involving the legality of the provision of the law involving non-Communist affidavits.

The Department of Justice now has twenty-five to thirty cases of non-Communist affidavits under study.

The first cases referred to the department were those of three officials of the United Furniture Workers Union, CIO. They involved the depositions of Max Perlow, secretary-treasurer; Morris Pizer, president, and Ernest Marsh, director of organization.

Mr. Perlow announced last June 6 that he had left the Communist party. He was the first union official since the Taft-Hartley Act was passed two years ago to announce abandonment of Communist party membership to sign the non-Communist affidavit.

However, Mr. Perlow, at the same time, made it plain that he was not renouncing his belief in Communist doctrines or that he would refrain from advocating them "through peaceful, constitutional processes."

Mr. Perlow and Mr. Marsh are now involved in a dispute with Mr. Pizer because the latter broke with the left wing.

The furniture union is threatened with expulsion from the Congress of Industrial Organizations for allegedly following Communist-line policies rather than those of the CIO. Mr. Pizer, as union president and a member of the CIO executive board, faces trial before a CIO committee on the same charge and is threatened with loss of his CIO executive board position.

The latest of the cases to be handed to the Department of Justice by the NLRB are those of two officers of the United Electrical, Radio and Machine Workers of America.

This union, recently expelled from the CIO, filed non-Communist affidavits on behalf of several officials who have been listed as Communists by the House Committee on Un-American Activities. Among these officials are Julius Emspak, secretary-treasurer, and James J. Matles, director of organization.

Messrs. Matles and Emspak are to appear under subpoena next week at a hearing of the House Committee on Un-American Activities.

The Taft-Hartley Law does not require a union official who signs the required affidavits to make any statements of past membership in the Communist party. It merely requires such an official to swear that "he is not a member of the Communist party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

Donald Henderson, president of the Food and Tobacco Workers Union, CIO, and Maurice Travis, secretary-treasurer of the Mine, Mill and Smelter Union, CIO, who signed the affidavits, acknowledged in newspaper statements that they had been members of the Communist party but had resigned.

EMSPAK EXHIBIT #4

EMSPAK EXHIBIT #4

FILED
DEC 19 1950
HARRY M. HULL, CLERK

York Times.

by The New York Times Company.

WEDNESDAY, JULY 21, 1948. Times Square, New York 18, N. Y. Telephone LAckawanna 4-1000 THREE CENTS IN NEW YORK CITY

LATE CITY EDITION

Hot, humid with evening thunder showers today. Showers tomorrow.

Temperature Range Today-Max.,90; Min.,70
Temperatures Yesterday—Max.,83; Min.,69
Full U. S. Weather Bureau Report, Page 47

12 U.S. COMMUNISTS INDICTED IN ANTI-GOVERNMENT PLOT; FOSTER, DAVIS, OTHERS SEIZED

BAIL SET AT $5,000

Special Federal Grand Jury's Action Follows Year's Investigation

PARTY CONDEMNS TRUMAN

Calls Charges the 'American Version' of Reichstag Fire —Hearing Due Aug. 23

By MEYER BERGER

Six of twelve high-ranking Communists indicted yesterday by a special Federal grand jury that has investigated Communist activity for more than a year were arrested here last night on charges of conspiring to overthrow the United States Government.

Of the six others, some of whom live in cities elsewhere, one was arrested last night in Detroit. He is Carl Winter, chairman of the Communist party in Michigan. He was held in $10,000 bail for hearing in a fortnight.

The six arrested in New York were held in $5,000 bail each for hearing Aug. 23; but they were released at 10 P. M. in custody of their attorney, Abraham Unger, on the promise that they would reappear at 10 A. M. today before Federal Judge Vincent L. Leibell with the bond.

Held On 2 Indictments Each

The six taken in New York included William Z. Foster, party chairman and several times Communist candidate for President of the United States; Benjamin Davis, New York City Councilman; and several members of the Communist National Board. Each of the six was held on two indictments. Hearing date was set for Aug. 23.

The men named in the indictments in addition to Foster, Davis and Winter, were:

John Williamson, member of the Communist national board.

Eugene Dennis, general secretary of the Communist party.

Henry Winston, member of the national board.

Jack Stachel, member of the national board.

Robert Thompson, member of the national board and chairman of the New York State Communist party.

John Gates, editor of the Communist Daily Worker since 1947.

Irving Potash, manager of the Furriers' Joint Council of New York, CIO, member of the Communist national board.

Gilbert Green, Chicago Communist district chairman.

Gus Hall, chairman of the Communist party in Ohio.

Several Are Aliens

Several of these men are aliens, among them Williamson, Stachel and Potash.

United States Attorney John F. X. McGohey described the twelve men as "the Communist party's governing board." "They run the party," he said. "They make the policy and decide what it will do."

The indictments, which had been sealed when they were handed up before noon, in Judge Leibell's court, were opened at the arraignment here. A blanket indictment accused all twelve of the men named of conspiracy to violate the so-called Smith Act, a defense measure passed in June, 1940. Each of the men was indicted individually for specific violation of the act.

The general indictment set forth:

"That from on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment the defendants unlawfully, wilfully and knowingly did conspire with each other, and with divers other persons to the Grand Jurors unknown, to organize as the Communist party of the United States a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and knowingly and wilfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence, which said

Continued on Page 3, Column 1

PARTY CONDEMN'S TRUMAN

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Continued From Page 1

acts are prohibited by the Smith Act."

The individual indictments charged:

"That from on or about July 26, 1945, and continuously thereafter up to and including the date of the filing of this indictment, the Communist party of the United States of America has been a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence.

"That from on or about July 26, 1945, the defendant herein has been a member of said Communist party of the United States of America, the defendant well knowing during all said period that said Communist party of the United States of America was and is a society, group and assembly of persons who teach and advocate the overthrow and destruction of the United States by force and violence."

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CONVICTED COMMUNISTS HANDCUFFED AND ON THEIR WAY TO JAIL

Defendants line up before leaving the Federal Courthouse for House of Detention. They are (left to right) Henry Winston, Eugene Dennis, Jacob Stachel, Gilbert Green, Benjamin J. Davis Jr., John B. Williamson, Robert G. Thompson, Gus Hall, Irving Potash, Carl Winter and John Gates.

The New York Times (by Ernest Sisto)

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ICTED COMMUNISTS HANDCUFFED AND ON THEIR WAY TO JAIL

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The New York Times (by Ernest Sisto)

VERDICT IN 7 HOURS

Judge Approves It and Thanks Jurors at Tense Close of 9-Month Trial

TEN-YEAR TERMS FACED

Defendants and Advocates to Appeal—Latter Get One to Six Months as 'Example'

Text of Judge's statement in sentencing counsel, Page 3.

By RUSSELL PORTER

Eleven top leaders of the Communist party of the United States were found guilty yesterday of criminal conspiracy. They were convicted of secretly teaching and advocating, on secret orders from Moscow, overthrow of the United States Government and destruction of American democracy by force and violence.

The verdict was returned in the Federal Court House on Foley

384

EMSPAK EXHIBIT # 6

EMSPAK EXHIBIT # 6

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DEC 13
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FBI READY TO MOVE ON 20,000 NEW YORK REDS

10 CENTS

NEW YORK Journal-American

AN AMERICAN PAPER FOR THE AMERICAN PEOPLE

DAILY, 5 Cents. SATURDAY, 10 Cents. SUNDAY, 15 Cents.

No. 22,525—DAILY SATURDAY, OCTOBER 15, 1949

7TH SPORTS RACING ☆☆☆☆☆☆☆ SPORTS EXTRA

Subversives Scurrying to Underground

(Read article by Fulton Lewis Jr. on Today's Editorial Page)

By HOWARD RUSHMORE

With their national leaders convicted as criminal conspirators, New York City's 20,000 Communists today faced the possibility of a Justice Department crackdown on the far-flung Red Fascist organization with its network of cells in every borough.

This government blue-print may be put into effect in every major city once the Supreme Court passes on—or refuses to review—yesterday's Federal Court verdict which held the 11 Reds guilty of conspiring to teach and advocate overthrow of the United States government by force.

The FBI, the Immigration and Naturalization Service and other Federal agencies here and in other cities have in their files the names, photographs and even fingerprints of thousands of Communists, the N.Y. Journal-American learned.

N. Y. Cells Going Underground

Since this city is the national headquarters of the Communist Party and the center of Red propaganda publishing, first action against thousands of Reds on conspiracy charges would be launched here.

Aware of this threat, the Communist party here has been going underground, destroying membership cards, records and literature and replacing veteran Communist officials with comrades virtually unknown to the rank-and-file.

This retreat has been gradual over the past year but once the word "guilty" flashed from the Federal courthouse yesterday, the undercover operation became a mass exodus.

State and county officials of the Communist party were receiving—as they have done for 25 years—detailed instructions from Communist International agents, the omnipotent commissars of the Red Fascists here.

Top Penalty 10 Years, $10,000

Meanwhile the titular heads of Stalin's fifth column in this country remained in the Federal House of Detention on West st.

The convicted national board members will not be available to advise their followers for all were remanded by Federal Judge Medina after the verdict to jail until sentence is passed next Friday.

The jurist whose deportment and courage made him a national hero during the 168 days of the "million dollar trial" can sentence the 11 Reds to 10 years imprisonment and fines of $10,000 each.

Appeals to higher courts will be made by the defense counsel—all five of whom drew jail sentences for criminal contempt—before the quintet of lawyers surrender themselves to the Attorney-General Nov. 15.

They are:

Harry Sacher, Richard Gladstein, A. J. Isserman, Louis F.

Continued on Page 4, Column 7.

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Emspak Exhibit No. 7

386 UAC House Report No. 1311-CIO-PAC,
March 29, 1944

Union Calendar No. 433

78th Congress, 2d Session House Report No. 1311

INVESTIGATION OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES

REPORT OF THE SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES HOUSE OF REPRESENTATIVES SEVENTY-EIGHTH CONGRESS SECOND SESSION ON

H. Res. 282

To investigate (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of Government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Report on the C. I. O. Political Action Committee

March 29, 1944.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

UNITED STATES,
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1944

387 **JULIUS EMSPAK.**

One of the top men in the C. I. O. Political Action Committee is Julius Emspak, secretary-treasurer of the United

Electrical, Radio and Machine Workers of America (C. I. O.), and in this capacity he was present at a political action conference held at the Hotel Warwick in Philadelphia on July 18, 1943. He is now also the editor of the U. E. News, official organ of the union.

Emspak's record as a Communist is established by his subservience to the line of the Communist Party on numerous issues, by his position of leadership in a Communist-controlled union, and by the Communist character of the U. E. News, official organ of the United Electrical, Radio and Machine Workers of America, under his editorship.

It has been estimated that three-fourths of the 570,000 workers in the U. E. R. M. W. A. are employed in defense industries, manufacturing such important war materials as aircraft and marine equipment, parts for tanks and guns, torpedoes, gun-sights, range finders, sound detectors, altimeters, gyroscopes, radio equipment, gauges, aerial cameras, motors, and cartridges. In 1943, the union claimed 970 collective agreements with such important defense manufacturing concerns as Westinghouse Electric with 75,000 employees, General Electric with 120,000 employees, General Motors with 30,000 employees, Radio Corporation of America with 12,000 employees, Fairchild Aerial Camera Co., Liquidometer Corporation, Colt Patent Fire Arms, Phelps Dodge Copper Products, Remington-Rand, Babcock and Wilcox, Electric Dynamic, National Radio Tube, Union Switch and Signal, and U. S. Cartridge Co.

Communist control of the United Electrical, Radio and Machine Workers of America has been demonstrated by its activity and by the testimony of competent authority. At its September 1941 convention in Camden, N. J., the organization repudiated a resolution permitting local unions to exclude Communists, Nazis, and Fascists from office. When this resolution was presented to the General Executive Board by James B. Carey, only two of its members supported him. Carey was charged with "red-baiting" and was defeated for the presidency because he refused to back down on the issue. The convention adopted, by a vote

of 789 to 377, a motion to bar only those who have been found guilty of "acts against the nation or against the union." Carey's adherents characterized this proposal as a meaningless "straddle," since defendants would thus be judged by a stacked red jury (New York Times, September 6, 1941, p. 16).

Prior to the break between Stalin and Hitler, the Communist leaders in the U. E. R. M. W. A. took the view that the British war effort should not be supported against Hitlerism. Anti-Communist forces in the convention sought to condemn the U. E. News as "Communist," charging that the policy of the paper shifted with the Communist Party line. The policy of the paper was vigorously

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Emspak Exhibit No. 8

388 UAC 100 Things-Com.—August 15, 1949

100 THINGS YOU SHOULD KNOW ABOUT COMMUNISM

Series: in the U. S. A.—and Religion—and Education—and Labor—and Government—and Spotlight on Spies.

Second Printing
August 15, 1949
Prepared and released by the
Committee on Un-American Activities,
U. S. House of Representatives
Washington, D. C.

389 altimeters, gyroscope, aerial cameras, motors, and other vital equipment, are at its mercy.

The union, which claims 600,000 members, is banned from representing our Nation's atomic workers.

80. *Surely the United Public Workers of America would not be a menace, would it?*

There are 15,000 members of this union in the Panama Canal Zone, alone. Many of the other 71,000 members are

stationed at navy yards, arsenals, experimental stations, the State Department, and throughout our Government agencies.

81. *Well, how do you know Communism has any power in any of these listed unions?*

Because of the men who hold positions of critical influence in them.

Here are some examples of Communist officers:

Name	Union	Office*
Harry Bridges	International Longshoremen's and Warehousemen's Union, CIO.	President.
Samuel Burt	International Fur and Leather Workers' Union, CIO.	Vice president; also manager, Joint Board of Fur Dressers and Dyers.
Philip M. Connelly	Los Angeles CIO Council	Secretary.
Julius Emspak	United Electrical, Radio and Machine Workers of America, CIO.	Secretary-treasurer.
Abram Flaxer	United Public Workers of America, CIO.	President.
Julius Fleiss	International Fur and Leather Workers' Union, CIO.	Business agent, Furriers Joint Council.
Ben Gold	International Fur and Leather Workers' Union, CIO.	President.
Donald Henderson	Food, Tobacco, Agricultural and Allied Workers' Union of America, CIO.	Do.
James Lustig	United Electrical, Radio and Machine Workers of America, CIO.	Representative, District 4.
James Matles	United Electrical, Radio and Machine Workers of America, CIO.	National organizational director.
Irving Potash	International Fur and Leather Workers' Union, CIO.	Vice president; also manager, Furriers Joint Council of New York.
William Sentner	United Electrical, Radio and Machine Workers of America, CIO.	President, District 8.
Maurice Travis	International Union of Mine, Mill and Smelter Workers, CIO.	Secretary-treasurer.

*Offices listed above were by the men in question as recently as the year 1948. If there have been any changes, they have not come to the committee's notice.

390 **Emspak Exhibit No. 9**

Investigation of Communist Infiltration of UERMWA

HEARINGS BEFORE A SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES
EIGHTIETH CONGRESS
SECOND SESSION

Pursuant to
H. Res. 111
(80th Congress)

Hearings held at Washington, D. C., September 2, 28, and 29. Schenectady, N. Y., September 30 and October 1, and at New York, N. Y., October 6, 1948.

Printed for the use of the Committee on Education and Labor

UNITED STATES
GOVERNMENT PRINTING OFFICE
81374 WASHINGTON : 1948

391 Then, too, we wanted his advice, and we got his advice on our end, as to how the Daily Worker could reach out more to reach UE members, and the like, and it was——

Mr. Kersten: Reciprocal?

Mr. Budenz: Reciprocal; yes.

Then in addition to these meetings at the Daily Worker office, of course, Wright met with the labor editors, who were Communists, who had a session every so often.

Mr. Kersten: Do you ever recall the UE News departing in its policy from the Daily Worker policy?

Mr. Budenz: It was considered to be the gem of Communist journalism.

Mr. Kersten: The UE News.

Mr. Budenz: Yes. It was pointed to on the Daily Worker

staff as an example of how a trade-union paper could follow the Communist line and yet deceive many people.

Of course, the word "deceive" was not used. I am making short cuts here. It was pointed to as an example of Communist initiative and intelligence in labor journalism.

Mr. Kersten: Are you familiar with Ruth Young, an official of the UE?

Mr. Budenz: I am, indeed.

Mr. Kersten: Do you recall whether or not she has participated in any Communist Party activities?

Mr. Budenz: Yes, sir; I do.

Mr. Kersten: Do you recall any chairmanships of State meetings?

Mr. Budenz: She was chairman May 23, 1938, of the State convention of the Communist Party. They are always executive. The press is not allowed in to note their activities, but she was the chairman of that session. The reason I recall that, if I may say, is because later on, and again in 1945, when Miss Young and I were having a little chat outside of the national committee sessions, where she had come as an observer, with Mr. Emspak by the way, she told me that the first time she met me was in this session of May 23, 1938, where she was chairman of the meeting. But I told her that was impossible, because I thought I was then in Chicago; we must have met earlier, which probably is the case. At any rate, her chairmanship of that session is down in black and white in the official proceedings of the Communist Party, printed there —Ruth Young as chairman.

Mr. Kersten: Do you recall the occasion of the trial or hearing concerning the status of Earl Browder in the year 1945?

Mr. Budenz: I do, very much. I stayed there during 3 days and 3 nights.

Mr. Kersten: Where was that?

Mr. Budenz: That was on the third floor of the headquarters of the Communist Party—that is to say, in the building on Twelfth or Thirteenth Street, and in what is

known as the Hank Forbes Auditorium. That is a room, now, extended out of the old Workers School. The Workers School went out of business when the party formed the Jefferson School of Social Science, and, in going out of business, a number of its officers had to be used in some way, and they converted three or four of the schoolrooms into the Hank Forbes Auditorium. And that is where we met, about 80 of us.

392 Mr. Kersten: How was that meeting composed; what was the composition of it?

Mr. Budenz: Sixty members of the national committee and 20 leading Communists who were trade-union leaders, who were there as observers and to give advice and counsel.

Mr. Kersten: The 20 were designated how?

Mr. Budenz: Twenty were designated by the political committee of the party, at that time functioning, I believe, through a secretariat, because Browder had been temporarily suspended as leader.

Mr. Kersten: You say this meeting lasted 3 days and 3 nights, commencing about what time?

Mr. Budenz: You mean in the daytime? Ten o'clock in the morning.

Mr. Kersten: Lasting until when?

Mr. Budenz: About 11 at night.

Mr. Kersten: Do you recall some of the individuals who were there at that time?

Mr. Budenz: Yes. Amter, and Charles Krumbein, and he is now deceased.

Mr. Kersten: Krumbein is deceased?

Mr. Budenz: Yes. He was chairman of the last meeting. And John Williamson, and William Z. Foster, and Earl Browder, whom everybody avoided; and then trade-unionists. I remember Miss Young was there, and Julius Emspak was there.

Mr. Kersten: Emspak was there?

Mr. Budenz: Yes; he sat right next to me all 3 days.

Mr. Kersten: Where were you in it?

Mr. Budenz: I was in the rear of the hall. It was a small hall. It seated 80 people comfortably, but there was no extra room there. I sat near the rear. As managing editor of the Daily Worker I had to be near the door in case there were some emergency calls from the news department. And Emspak sat right next to me, on my right, all of the time. We exchanged many pleasantries together.

Mr. Kersten: Do you recall any episodes concerning statements from the Chair in connection with Mr. Emspak?

Mr. Budenz: Well, I remember both some episodes in connection with the Chair and Emspak, and Emspak and the Chair. That is, toward the last session, as with all Communist sessions, everybody had to agree, so everybody agreed that Browder should be considered an outcast and a moral leper. That is what the whole session was about until the last session, and then the vote in regard to demoting Browder was 59 to 1, Browder being the 1.

The thing is that, after this session in which everybody continued to tell what a dog Browder had been, what an outcast he had been, how he betrayed everyone—after that there was a brief night session, because in order to comply with legalisms, the party has to go through the idea of having certain motions adopted, and all of these motions are unanimous; and so they had motions in regard to adopting the report of Comrade Foster and Comrade Dennis, which were all unanimous. And then they had an editing committee, which is always appointed to look over the political content of the resolutions, which are hastily drawn, of course This editing committee, I believe, was headed by Israel Amter—at least he was a prominent mem-

393 ber—and one of the members named by John Williamson, who was secretary of the meeting, was Comrade Juniper. There were only about six on this com-

mittee. And all of the other names were known except Comrade Juniper.

Then one person there, who was a trade-unionist, who had not been fully educated as a Communist, committed an unpardonable error. He got up and asked who was Comrade Juniper.

The retort—as in Chicago when someone asked, "Isn't Comrade Rossi really Harry Bridges?"—by Williamson, "This is an unpardonable reflection upon the integrity of Comrade Juniper, who is well known to the political committee as a tried and trusted comrade, who has always lived up to every injunction of the party, and it will be considered an anti-Communist act to consider any further reflections upon his integrity."

No one had reflected upon his integrity. They just asked who he was. You are not supposed to ask who people like that are, and the man was squelched. Comrade Juniper became a member of the editing committee.

Mr. Kersten: And where was he at the time?

Mr. Budenz: He was right next to me.

Mr. Kersten: That being whom?

Mr. Budenz: Julius Emspak.

Mr. Kersten: Do you recall any conversation with Emspak with regard to the way in which the chairmanship was handled on any of those days?

Mr. Budenz: Yes, sir.

Mr. Kersten: What do you recall about that?

Mr. Budenz: Well, the last meeting was rather chaotic, in one way. That is, these motions were being passed, but apparently the Communist leaders did not know how to carry out parliamentary law among themselves. I mean to say that the meeting was a little in disorder, compared to the previous discussion. Charles Krumbein—he is dead now; I don't wish to reflect on him—he was not conducting it in parliamentary order—did not recognize people that

The Witness: Very well.

Mr. Gordon: I think I can straighten it out, your Honor.

Q. Did Emspak and Young have a conversation? A. Yes, sir. They had it right next to where I was. Mr. Emspak sat next to me.

Q. All right. Now don't tell us the conversation. Emspak sat right next to you and he and Young had a conversation? A. That is correct.

Q. And after they had that conversation did either of (T-1711) them go up and talk to any of the defendants on trial or to William Z. Foster? A. They talked to Mr. Foster and to Mr. Williamson and to several others up in front, whom I don't recall at the moment.

Q. And what was it that they said? A. They said to Mr. Foster that the time is not ripe for action of that character, that that would destroy them immediately in the trade unions.

Q. And what did Foster do? A. About half an hour later he arose and withdrew that suggestion.

Q. At the time that Foster made this call for politicalizing strikes—

Mr. Sacher: I object to that question on the ground that it assumes a state of facts not in evidence.

The Court: Well, I have down here that the witness testified that Foster urged the strikes and urged them to politicalize these strikes.

Isn't that what you just said, Mr. Budenz?

———

398 **Emspak Exhibit No. 11**

[Committee Print]

Report of the Subcommittee on Legislation of the Committee on Un-American Activities on Proposed Legislation to Control Subversive Communist Activities in the United States

INVESTIGATION OF UN-AMERICAN ACTIVITIES IN THE UNITED STATES

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

EIGHTIETH CONRGESS

SECOND SESSION

Public Law 601
(Section 121, Subsection Q (2))
April 10, 1948

UNITED STATES
GOVERNMENT PRINTING OFFICE
74282 WASHINGTON: 1948

399 munist Party has, in, fact, enjoyed a privileged status, insofar as prosecution under these laws is concerned.

During the war, while the Soviet Union was an ally, some justification for this failure might have existed, but now, when the Soviet Union and its Communist satellites are waging a cold war against the United States and the other free nations of the world, such failure to proceed under existing laws against Communists in the United States is utterly inexcusable.

The effective prosecution of Communists under existing laws has fallen generally into two categories. First there are cases in which Communists have been cited for contempt by the Committee on Un-American Activities. Although a number of contempt citations have been voted over the past 10 years, a commentary upon the effectiveness

of the Justice Department's prosecution of such cases is that just 1 month ago Leon Josephson was the first Communist who began to serve a jail term as a result of sentence and conviction on a contempt charge. The record of convictions in contempt proceedings has been excellent in recent months.

The Justice Department has also begun to proceed recently against alien Communists who perjured themselves in many cases as to their allegiance to the Communist cause when they entered the United States. It is significant that in some of these cases violations occurred over 15 years ago, yet only now has the Justice Department seen fit to prosecute.

Had the law-enforcement authorities vigorously enforced existing laws against Communists in the United States, the growth of the movement would undoubtedly have been stultified, so that it would not constitute the serious threat to our national security that it does at the present time. This apathy to, and coddling of, the Communists in the United States by the Department of Justice is in great measure responsible for the magnitude of the problem with which we are faced today.

The committee therefore recommends that the Justice Department immediately institute vigorous prosecution against Communists in every case where they have been guilty of violating existing laws. The Congress cannot be expected to pass legislation directed at controlling subversive influences if such laws are to become dead letters due to the failure of the Justice Department to prosecute. The committee wishes to point out that the Federal Bureau of Investigation has done an excellent job in investigating the activities of Communists in the United States, but investigation without prosecution is not an answer to the problem.

got up to make motions, and the like. He passed motions without giving them to the floor. So Emspak said to me, "If we had a chairman like that in one of our newly organized locals, we would throw him out. They don't know how to run things around here in a parliamentary fashion."

"Maybe that is because they never had any practice." I at least made that much of a crack to him, and he did not resent it. He did not like the lack of parliamentary law in the final session. However, he was on the editorial committee, and in an accepted position.

Mr. Kersten: What was the purpose of this 3-day meeting, therefore, in June of 1945 at Communist Party headquarters?

Mr. Budenz: The purpose of it was to express the complete, unadulterated support by the Communist Party of the statement of Jack Duclos that Earl Browder was a revisionist, a traitor to Soviet Russia and Communist movement, and to demote Browder from leadership in the Communist Party.

Mr. Kersten: In other words, the Communist line had been handed down to this group; is that right?

Mr. Budenz: That is correct.

Mr. Kersten: Do you recall who the carrier of that line was or the instrument of that line? How did they know about that?

394 **Emspak Exhibit No. 10**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

United States of America,

Appellee,

v.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall,

Defendants-Appellants.

JOINT APPENDIX

On Appeal from Judgments on Conviction of the United States District Court for the Southern District of New York

[TRIAL TESTIMONY]

VOLUME V—PAGES 3359 TO 4158
(TRIAL TRANSCRIPT, PP. 1370 TO 2637)

395 *Louis Francis Budenz—for Government—Direct*

Q. Does tailism meaning hanging on to somebody's coat tails?

Mr. Sacher: I object to this question on the ground that it calls for the witness's conclusion and opinion.

The Court: Overruled.

(T-1707) Weren't you the editor of this Daily Worker while a lot of this material came out with this "tailism" in every once in a while?

The Witness: Yes, sir, I was editor of the Daily Worker.

The Court: What does that mean?

The Witness: Tailism is a common Communist expression meaning to hold on to somebody else's coat tails, that is, to follow completely the leadership of that other person or force or group. It is a common expression in Communist phraseology.

Q. Do you remember any of the other reports that were made at the meeting? A. Yes, sir. John Williamson stated also the urgency of reading the Marxist-Leninist classics; that the state of revolution of Lenin had been practically put on the shelf; that there should be revived Stalin's works, above all the History of the Communist Party of the Soviet Union, Foundations of Leninism, Lenin's works, those works which stated the revolutionary Marxist-Leninist line and viewpoint. He also included, as I recall, Dimitroff's speeches in his recommendations.

Then Elizabeth Gurley Flynn spoke and stated—or rather, before her, Robert Minor spoke and stated that while he supposedly was very close to Browder, that actually he was watching Browder all the time and was opposing (T-1708) Browder and fighting Browder; that Browder had gone so far as to meet with six Senators in Washington and offered to give up the Communist Political Association, and only leave the Daily Worker exist.

And then Jack Stachel interrupted, as I recall, and said, "Leave the six Senators out. Don't name them."

Browder—

Q. Did he name them? A. No, he did not. Minor went on to affirm his acquiescence in the resolution and
396 to state that his previous writings, which had been very enthusiastically noted in favor of Browder, had been because that was necessary and that he agreed with the resolution as it was now and was against revisionism.

Elizabeth Gurley Flynn arose to criticize Minor, stating that he had held to the mental apron strings of Earl Browder, but she said that was not uncommon, that everybody had been intellectually terrorized in the political committee and the national committee; that she hadn't had one independent thought as a member of the political committee, though she was there for a long time; that she was only there, probably, because she was a woman; that she hadn't been allowed any independent thoughts; that when she did express them she had been bowled over with the

charge from some of the leading comrades that she didn't know Marx's theory. She hoped now that an opportunity (T-1709) would be accorded to have some democratic expression in the party, at least in the national and political committees because she hadn't been afforded that.

Others spoke along the same line, everybody agreeing that Browder revisionism was a disgrace, that it was necessary to return to the Marxist-Leninist revolutionary line, and to follow Comrade Foster's words that there should be a return to the Marxist-Leninist position and practices, to the practices of the party before Browderism crept into it—revisionism crept into it.

During one course of the third day of the session Foster himself arose to move that carrying out this new viewpoint, there should be immediately wired to several large strikes then existing word that they should fight constantly, to continue striking; that in addition to that, wherever labor disputes existed, wires should be sent urging them to strike and that the comrades everywhere should be urged to politicalize these strikes.

This caused a hurried conference between Ruth Young of the United Electrical Radio and Machine Workers Union and Julius Emspak of that union—he was sitting right next to me—in which they contended that this (T-1710) was not the time—

(T-1710) Mr. Sacher: I object to this on the ground that it is not binding on any of the defendants.
397 The Court: Overruled.
They were right there, weren't they?
The Witness: They were right in this small room.

Q. Go ahead. A. Between themselves they agreed—

Mr. Sacher: I object to that, your Honor.

A. Ruth Young—

The Court: Tell the jury what was said. You see when you say "they agreed" that is a sort of a characterization, and as far as you can, tell the substance of what they said.

RECOMMENDATIONS FOR NEW LEGISLATION

The Committee on Un-American Activities held public hearings last year on several bills which had been introduced to curb or outlaw the Communist Party. Commencing on February 5, this year, additional hearings were held by the Subcommittee on Legislation. Perhaps the most outstanding panel of legal talent ever to appear before a congressional committee testified concerning the bills before the subcommittee. The witnesses were in virtual agreement as to the necessity for new legislation. There was, of course, some disagreement as to

400 **Emspak Exhibit No. 12**

[Committee Print]

Report of the Committee on Un-American Activities to the United States House of Representatives, Eightieth Congress

INVESTIGATION OF UN-AMERICAN ACTIVITIES IN THE UNITED STATES

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

EIGHTIETH CONGRESS

SECOND SESSION

Public Law 601
(Section 121, Subsection Q (2))
December 31, 1948

UNITED STATES
GOVERNMENT PRINTING OFFICE
83400 WASHINGTON : 1949

401 its finances, publications, educational activities, its work among minority groups and organizations.

The vast reference collection of the committee is in constant use by committee members and staff employees. Information is also made available to individual Members of

Congress, other congressional committees, and various agencies in the executive branch of the Federal Government. From June 20, 1946, to December 22, 1948, reports on 25,591 individuals and 1,786 organizations were compiled by staff members at the request of Members of Congress. These written reports cover all information found in files, records, and publications of the committee concerning the individual or organization.

The files of the committee have been open to accredited agents of the executive departments and have been widely used in security checks. In Presidential Executive Order 9835, dated March 21, 1947, which prescribes procedures for administration of the loyalty program for Federal employees, the files of the Committee on Un-American Activities are listed as one of the pertinent sources of information to be checked in determining the loyalty of employees and applicants for employment. They have been widely used for this purpose.

Indexes to public hearings and committee publications contain 48,221 references to individuals and 8,593 references to organizations. These indexes and the committee's card files are consulted daily by authorized personnel from numerous Government agencies in connection with loyalty or security investigations. During the period January 22, 1947, to December 21, 1948, accredited representatives of Government agencies made 5,975 visits to the committee file room to secure information. The length of such visits varied from 20 or 30 minutes to an entire day, during which time files were checked for available information concerning 3 to 200 or more individuals.

Visitors during this period were representatives of the following agencies: Federal Bureau of Investigation, Civil Service Commission, State Department, Treasury Department, United States Coast Guard, United States Secret Service, War Department, United States Air Force, Central Intelligence Agency, Navy Department, Labor Department, Federal Communications Commission, Securities and

Exchange Commission, Commerce Department, Agriculture Department, Economic Cooperation Administration, National Labor Relations Board, Federal Power Commission, Civil Aeronautics Board, War Assets Administration, and Metropolitan Police Department.

Material relating to individuals and organizations has been so carefully indexed that Government agents may make their own checks of committee publications and card files. Numerous questions arise as to the source of information found, however, and staff members are constantly available to furnish reference material and answer inquiries. On an average, each person who consults the files makes two requests for assistance.

Government investigators have made constant use of the consolidated card records, a collection of 300,000 card references to activities and affiliations of individuals. Eight cabinets are devoted to these references which are an index to source material in committee files.

In addition to the consolidated card records, which contain references to thousands of individuals, files are maintained on the activities of some 3,040 persons. Five cabinets are devoted to information concerning these individuals, many of whom are top leaders in subversive groups or prominent fellow travelers of the Communist Party. These collections are a valuable guide to the activities of various subversive groups as well as individuals.

402

The committee has compiled lists of signers of Communist Party election petitions for various years in 20 States, showing 363,119 signatures. These lists have been obtained from original petitions or photostatic copies of original petitions. The committee has published printed lists of signers of election petitions of the Communist Party for 1940 in the following States: Arizona, California, Connecticut, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wisconsin.

The committee has also indexed the following Communist Party election petitions: California, 1932, 1934, 1936, and 1938; 1942 petitions in Colorado and New York; 1946 petitions in Colorado, Connecticut, Michigan, and Pennsylvania; New York City, 1936, 1939, 1940, and 1945; Philadelphia, 1941 and 1946.

Of the 363,119 signatures, some 335,660 have been indexed and printed by the committee. The remaining signatures have been indexed and filed in the consolidated card record file. This large completely indexed collection has been a helpful guide in the study of Communist activity in these States and serves as a valuable and readily accessible reference collection for investigators from Government agencies.

In 1948, Government agencies made 80 requests for photostatic copies of signatures to Communist Party election petitions, and other exhibit material in committee files, with the number of pages of photostats in such requests ranging from 1 to 36. During the year, 50 requests were also made by various agencies for the use of material in file on a loan basis for photostating.

Since subversive forces try to infiltrate other organizations while working through their own, the committee has acquired a vast store of information concerning thousands of organizations in the United States. Its scope can be illustrated by the fact that files contain information concerning 380 organizations with names beginning with the letter "A."

Organization material in file is composed chiefly of material issued by the organizations themselves. Letterheads, statements of purpose and policy, reports on proceedings, press releases and literature, announcements of activities, news clippings—material from which the nature of the organization may be determined.

During the past 10 years, the committee has acquired 5,000 pamphlets. Most of these have been written by leaders prominent in subversive movements or issued by subversive organizations. This huge collection contains numerous Fas-

cist and Nazi pamphlets and hundreds of publications of the Communist Party. The collection ranges from subtle to open propaganda, through story, song, and verse, and reflects the constant effort of subversive groups to incite hatred, capitalize on prejudice, enmesh the unsuspecting, and divide the American people on national and international issues.

Some 8,553 issues of 644 periodicals serve as valuable sources of information. These periodicals reveal the motives and policies of hundreds of subversive groups and the activities of their leaders. The

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403 **Emspak Exhibit No. 13**

REFERENCE EXHIBIT SUBMITTED TO HOUSE COMMITTEE ON EDUCATION AND LABOR BY J. B. MATTHEWS, HEARINGS, SEPTEMBER 29, 1948.

OFFICIALS OF THE UERMWA WITH COMMUNIST AND COMMUNIST FRONT AFFILIATIONS

Abbreviations used in transcribing from original:

C.P.	Communist Party
D.W.	Daily Worker
S.W.	Sunday Worker
T.W.	The Worker
CRC	Civil Rights Congress
NFCL	Natl. Federation for Constitutional Liberties
APM	American Peace Mobilization
FO	UE Field Organizer
IR	UE International Representative

Number of names: 224

NOTE: Matthews' testimony referred to this exhibit as containing 250 names. Indications are that he inadvertently left off the pages containing the remaining 26 names —the original document appeared to have been stapled only

once and gave no sign that papers had been removed after stapling.

Copied October 9, 1948.

404 **Officials of the UERMWA with Communists and Communist Front Affiliations**

Albert, Owen (Local 757)
Signed a CP manifesto demanding a "second front"—DW Aug. 11, 1942

Alfone, Joseph (UE FO)
Signed a CRC manisfesto defending CP—TW May 25, 1947

Anderson, Ernest (Local 1225)
Sent telegram to Attorney General Biddle denouncing Bridges deportation order—DW May 29, 1942

Anderson, Robert (Local 441)
Sent May Day greetings to DW—TW, April 28, 1946

Appelle, Walter (Local 203)
Signed a CP manifesto demanding a "second front"—DW July 29, 1942

Arsenault, Oliver (Local 203)
Supported DW fund drive—DW June 12, 1943; Identified as CP member by Joseph Julianelle before Committee on Un-American Activities, July 24, 1947

Ashur, Emil (Local 423)
Signed a CRC manifesto defending CP—TW May 25, 1947

Ayola, Bruno B. (Local 1146)
Signed a CRC statement denouncing indictment of 12 CP leaders—DW September 23, 1948

Bachenko, Tom (Local 623)
Signed a CP manifesto demanding a "second front"—DW July 26, 1942

Bailey, Howard (Local 137)
Served in Communist-controlled Abraham Lincoln Brigade

Baker, Leonard (Local 1154)
Sent May Day greetings to Chicago Star—Chicago Star April 26, 1947; Signed a CRC manifesto defending CP—TW May 25, 1947

Bandarra, John (Local 277)
Signed a CRC manifesto defending CP—TW May 25, 1947

Barry, Walter (UE IR)
Identified as CP member by James Conroy before Committee on Un-American Activities July 25, 1947; Signed CRC manifesto defending CP—TW May 25, 1947; Sponsored End Jim Crow in Baseball Committee—letterhead Aug. 1945

Baumann, Grace (Local 622)
Signed a CP manifesto demanding a "second front"—DW July 26, 1942

Bednarski, Siggie (Local 421)
Signed a petition of the Citizens Committee to Free Earl Browder—DW March 16, 1942

405 Berlin, William (Local 453)
Seen at Communist Party headquarters in New York City—Bulletin of UE Members for Democratic Action

Berman, Irene (Local 1150)
Member of subscription committee for Chicago Star—Chicago Star, March 20, 1948

Bersing, Carl (UE District 1)
Denounced "war powers bill"—DW Jan. 15, 1941; Speaker for Committee for Peoples' Rights—DW May 29, 1941

Besch, Peter (UE)
Signed a CRC manifesto defending CP—TW May 25, 1947

Bingaman, Clarence (Local 810)
Signed a CRC manifesto defending CP—TW May 25, 1947

Bittman, John (UE FO)
Signed a CRC manifesto defending CP—TW May 25, 1947

Bjorklund, Allan (UE FO)
Sent greetings to DW on 20th anniversary—TW January 9, 1944

Bliss, Willard (UE FO)
National trade union director of American League for Peace and Democracy—DW July 29, 1939

Bloom, Frank W. (Local 155)
Signed petition of Citizens Committee to Free Earl Browder—DW March 4, 1942

Blusewicz, Frank (Local 441)
Sent May Day greetings to DW—TW April 28, 1946

Boettger, Fred W. (Local 155)
Signed CRC manifesto—TW May 25, 1947

Bowie, Chet (Local 447)
Wrote letter to DW telling why he had joined CP—DW March 28, 1943

Bradley, Harry J. (Local 709)
Signed a CRC manifesto defending CP—TW May 25, 1947

Brady, T. J. (Local 623)
Signed a CP manifesto demanding a "second front"—DW July 26, 1942

Brady, Wm. J. (Local 1149)
Signed a CRC manifesto defending CP—TW May 25, 1947

Brandon, Victor W. (Local 623)
Signed a CP manifesto demanding a "second front"—DW July 26, 1942

Brant, Carl (Local 1421)
Sponsored American Youth for Democracy—Report of California Legislative Committee on Un-American Activities 1948

406 Brett, C. L. (UE Unity Lodge)
Secretary of Hartford Committee to Free Earl Browder—DW October 15, 1941

Briney, H. K. (Local 610)
Signed a CP manifesto demanding a "second front"—DW July 26, 1942

Brown, Garvin (Local 441)
Sent May Day greetings to DW—TW April 28, 1946

Brumbaugh, Ivan (Local 709)
Signed a CRC manifesto defending CP—TW May 25, 1947

Burdick, A. A. (Local 437)
Signed a CRC manifesto defending CP—TW May 25, 1947

Burkhardt, Logan (Local 601)
Signer of CP Peace Proclamation—DW January 3, 1940; Member of CP arrested for fraud in obtaining signatures on nominating petitions, DW July 12, 1940; Convicted a fraud in obtaining signatures—DW November 1, 1940

Burns, Frank (Local 430)
Identified as CP member by James Conroy before Committee on Un-American Activities, July 25, 1947; Signed petition of Citizens Committee to Free Earl Browder—DW May 2, 1941; Delegate to APM—DW May 2, 1941

Carpenter, Ethel (UE FO)
Signed a CRC manifesto defending CP—TW May 25, 1947

Chamber, William N. (Local 601)
Signed a CP manifesto demanding a "second front"—DW July 26, 1942

Christilaw, Jack (Local 935)
Signed a CRC manifesto denouncing recent indictment of 12 leaders of CP—DW September 23, 1948; Endorsed CP's Michigan Herald—MH August 31, 1947

Chuck, Andrew (Local 424)
Signed petition of Citizens Committee to Free Earl Browder—DW March 16, 1942

Clark, William (Local 441)
Sent May Day greetings to DW—TW April 28, 1946

Clough, Al (UE FO)
Signed protest on behalf of CP nominating petition signers—DW Sept. 10, 1942

Cluka, Earl (Local 1145)
Signed petition of NFCL—January 1943

Clutter, Sam (Local 623)
Signed CP manifesto demanding a "second front"—DW July 26, 1942

Coe, Maceo (Local 446)
Meeting chairman of Workers Alliance—DW August 14, 1937; Signed CRC manifesto denouncing indictment of 12 CP leaders—DW Sept. 23, 1948

407 Cole, Lloyd (Local 610)
Signed a CP manifesto demanding a "second front" —DW July 26, 1942

Composto, Anthony (Local 1227)
Supported CP leader, Israel Amter, for Governor of New York—DW Oct. 27, 1942

Conroy, Harold (Local 270)
Identified as CP member by James Conroy before Committee on Un-American Activities, July 25, 1947; Signed CP manifesto demanding a "second front"—DW July 29, 1942

Constantino, Robert (UE District 1)
Signed petition of Citizens Committee to Free Earl Browder—DW March 4, 1942

Corcos, Chrystal (UE District 4)
Signed Statement of Citizens Committee of Upper West Side—DW July 4, 1943

Couch, Edward (Local 615)
Signer of CP's Peace Proclamation—DW January 4, 1940

Czerwinski, E. (Local 209)
Signer of petition of Citizens Committee to Free Earl Browder—DW Nov. 15, 1941

Dahl, Harold (Local 907)
Served in Spain with Abraham Lincoln Brigade and traveled on Spanish passport in name of Hernando Diaz; Endorsed CP's Michigan Herald—MH August 31, 1947

Daniel, Nathan (Local 1227)
Signed CRC manifesto defending CP—TW May 25, 1947

Darin, Margaret (Local 601)
Signer of CP's Peace Proclamation—DW January 4, 1940

Daugherty, Marshall (Local 601)
Signed CP manifesto demanding a "second front"—DW July 26, 1942

Davis, E. E. (Local 1113)
Signed petition of Citizens Committee to Free Earl Browder—DW January 25, 1942

Decavitch, Victor (UE District 7)
Sent greetings to DW on 20th anniversary—TW January 9, 1944; Sponsored Joint Anti-Fascist Refugee Committee pamphlet—"I Know You Are My Brother"

Delaney, Thomas (UE District 1)
Sponsored CP's United May Day Conference in Philadelphia—DW April 4, 1946; Signed CRC manifesto defending CP—TW May 25, 1947; Signed CRC manifesto denouncing indictment of CP leaders—DW Sept. 23, 1948

Delong, Harley (Local 209)
Member of Bridgeport Committee to Free Earl Browder—DW Oct. 15, 1941; Signed petition of Citizens Committee to Free Earl Browder—SW Jan. 25, 1942

408 Divine, James (UE District 8)
Signed CRC manifesto defending CP—TW May 25, 1947

Dixon, Robert (UE District 4)
Signed CP manifesto demanding a "second front"—DW August 1, 1942

Dochmae, Stephen (Local 155)
Signed CRC manifesto defending CP—TW May 25, 1947

Dodson, George (UE District 1)
Signed petition of Citizens Committee to Free Earl Browder—DW March 4, 1942

Doggett, E. L. (UE Los Angeles)
Signed petition of Citizens Committee to Free Earl Browder—SW Jan. 25, 1942

Donegan, Dan (Local 229)
Signed CP manifesto demanding "second front"—DW July 29, 1942

Dorcik, Rudolph (Local 735)
Delegate to convention of American Committee for Protection of Foreign Born—Proceedings 1947

Dorlack, Joseph (Local 1131)
Signed petition of Citizens Committee to Free Earl Browder—SW Jan. 25, 1942; Called for release of Earl Browder at Wisconsin State CIO convention—DW Nov. 12, 1941

Dornetto, Dominick (Local 613)
Signed CP manifesto demanding "second front"—DW July 26, 1942

Draffen, Carlton C. (Local 935)
Endorsed CP's newspaper, Michigan Herald — MH August 31, 1947

Drezner, Joseph (Local 1225)
Wrote letter to UE News calling for release of Earl Browder—UE News August 30, 1941

Duffy, James (Local 610)
Signed CP manifesto demanding "second front"—DW July 26, 1942

Dutner, Fred (UE organizer)
Candidate for trustee in Cicero, Illinois on Progressive Party ticket—Chicago Star March 6, 1948

Eckstein, Bert (Local 441)
Sent May Day greetings to DW—TW April 28, 1946

Egri, James (Local 724)
Signed CRC manifesto denouncing indictment of 12 CP leaders—DW Sept. 23, 1948

Eismann (Local 766)
Signed CP manifesto demanding "second front"—DW August 11, 1942

Elliott, Kay (Local 709)
Signed CRC manifesto denouncing indictment of 12 CP leaders—DW Sept. 23, 1948

409 Evans C. (UE California)
Signed petition of Citizens Committee to Free Earl Browder—SW January 25, 1942

Ewing, Roy (Local 606)
Signed CP manifesto demanding "second front"—DW July 26, 1942

Fabyanic, Albert (Local 610)
Signed CP manifesto demanding "second front"—DW July 26, 1942

Fazekas, Frank (Local 203)
Identified as CP member by Joseph Julianelle before Committee on Un-American Activities—July 24, 1947

Fox, Ruth (UE Baltimore)
Sent greetings to Soviet Union on 26th anniversary of Red Army—Baltimore Sun, February 23, 1944

Frank, Charles (Local 1225)
Signer of telegram for Citizens Committee to Free Earl Browder—DW December 28, 1941

Frazier, William A. (UE FO)
Signed CRC manifesto defending CP—TW May 25, 1947

Fried, Emanuel J. (UE FO)
Signed protest on behalf of CP nominating petition signers—DW September 10, 1942

Friedlander, Sidney (Local 301)
Identified as CP member by Salvatore M. Vottis before Committee on Un-American Activities, July 25, 1947

Furda, George (Local 441)
Sent May Day greetings to DW—TW April 28, 1946

Gad, Andrew T. (Local 768)
Signed CRC manifesto defending CP—TW May 25, 1947

Gaeth, Arthur (UE Radio Commentator)
Received annual award of Communist-controlled Voice of Freedom Committee 1948. Praised in sketch in DW on assumption of his UE broadcasts—DW October 11, 1947

Gardner, Fred (UE IR)
Signed CP Peace Proclamation—DW January 4, 1940

Garfield, Arthur (UE IR)
Signed CRC manifesto defending CP— TW May 25, 1947

Garlow, Don (Local 606)
Signed CP manifesto demanding "second front"—DW July 26, 1942

Garner, Joseph (UE Cleveland)
Signed petition of Citizens Committee to Free Earl Browder—DW March 9, 1942

Garretson, James (UE Seattle)
Sent greetings to DW on 20th anniversary—TW January 9, 1944

410 Gaylburd, Marcus (Local 155)
Signed CRC manifesto defending CP—TW May 25, 1947

Gerlack, John R. (Local 475)
Member, NY Trade Union Committee to Free Earl Browder—DW February 5, 1942

Gionannini, Leo J. (Local 1117)
Signed CRC manifesto defending CP—TW May 25, 1947

Gilbert, Sidney (Local 1227)
Sent greetings to DW on 20th anniversary—TW January 9, 1944

Gilles, Earl (Local 1154)
Sent May Day greetings to CP's Chicago Star—Chicago Star April 26, 1947

Glaser, Elmer W. (Local 935)
Endorsed CP's Michigan Herald—MH August 31, 1947; Signed CRC manifesto denouncing indictment of 12 CP leaders—DW September 23, 1948

Gliniecki, August (Local 626)
Signed CP manifesto demanding "second front"—DW July 26, 1942

Gliona, Will (Local 301)
Signed call for American Youth Congress—Proceedings January 28, 1938

Gojack, John T. (UE District 9)
Member, Natl. Wallace for President Committee—press release March 23, 1948

Gourley, Edna (UE District 4)
Member, Committee for Wider Understanding with Soviet Union—DW August 25, 1941

Grabbe, Stanley (Local 1154)
Sent May Day greetings to CP's Chicago Star—CS April 26, 1947

Grabon, Boleslaw (Local 441)
Sent May Day greetings to DW—TW April 28, 1946

Gray, Justin (UE District 11)
Coordinating chairman of Veterans' Committee Against Discrimination—letterhead January 11, 1946

Greene, James (Local 1227)
Supported candidacy of Elizabeth Gurley Flynn for Congress on CP ticket—DW October 27, 1942

Grimm, Rudolph (Local 1227)
Supported candidacy of Israel Amter for Governor on CP ticket—DW October 27, 1942

Gudinas, Julia (Local 1150)
Sent May Day greetings to CP's Chicago Star—CS April 26, 1947

Gulotta, Frances (Local 430)
Member, Citizens Committee for Re-election of Peter V. Cacchione—DW August 3, 1945

Gumming, Sid (UE Hartford)
Signed CP manifesto demanding "second front"—DW July 29, 1942

411 Gunther, Lynn (UE Los Angeles)
Signed petition of Citizens Committee to Free Earl Browder—SW January 25, 1942

Guttko, Erwin A. (Local 448)
Signed CRC manifesto defending CP—TW May 25, 1947

Howago, Thomas (Local 617)
Signed CRC manifesto denouncing indictment of 12 CP leaders—DW September 23, 1948

Hamilton, W. (UE District 4)
Signed CRC manifesto defending CP—TW May 25, 1947

Harley. Hugh Jr. (Local 329)
Signed petition of Citizens Committee to Free Earl Browder—DW February 23, 1942

Harrison, Robert (UE FO)
Signed CRC manifesto defending CP—TW May 25, 1947

Hasson, Isaac (Local 1124)
Signed petition of Citizens Committee to Free Earl Browder—TW January 25, 1942

Heffner, Curtis D. (Local 128)
Signed CRC manifesto denouncing indictment of 12 CP leaders—DW September 23, 1948

Hines, Harry (Local 766)
Signed CP manifesto demanding "second front"—DW August 11, 1942

Hirschberg, Herbert (UE IR)
Signed CRC manifesto defending CP—TW May 25, 1947

Hochenberry, Thomas (Local 610)
Signed CRC manifesto defending CP—TW May 25, 1947

Horie, Jean (UE District 4)
Acting Executive Secretary, American Youth Congress, 1939; Speaker for American Committee for Protection of Foreign Born—DW March 31, 1941

Hughes, George F. (UE Los Angeles)
Signed petition of Citizens Committee to Free Earl Browder—TW January 25, 1942

Hunter, William (Local 601)
Signed CP Peace Proclamation—DW January 4, 1940

Janowicz, William (Local 401)
Signed CRC manisfesto defending CP—TW May 25, 1947

Jocwinski, Sigmond (Local 441)
Sent May Day greetings to DW—TW April 28, 1946

Jones, William (Local 761)
Signed CP manifesto demanding "second front"—DW August 22, 1942

Joyce, Hugh L. (Local 201)
Signed CRC manifesto defending CP—TW May 25, 1947

Juby, Morley R. (Local 935)
Endorsed CP's Michigan Herald—MH August 31, 1947

412 Judth, Ernest (Local 1150)
May Day greetings—Chicago Star—CS April 26, 1947

Juib, Mary (247)
CP manifesto—second front—DW July 29, 1942

Kaplan, Harry (District 2)
CP manifesto—second front— DW July 29, 1942

Kaplan, Louis (FO)
CRC manifesto defending CP—TW May 25, 1947

Kelley, William (136)
Sponsored CP's United May Day Conference, Philadelphia—DW April 4, 1946

Kenneck, Charles (155)
CRC manifesto defending CP—TW May 25, 1947

Ketzel, Ernest C. (768)
CRC manifesto defending CP—TW May 25, 1947

Kirkendall, K. M. (768)
CRC manifesto on CP—TW May 25, 1947

Kling, Martin (1131)
Petition, Citizens Committee to Free Earl Browder—TW January 25, 1942

Knowles, Mary (Local W'House X-Ray Co.)
Sent greetings to Soviet women on Intl. Women's Day —TW March 8, 1942

Kobylinski, Jean (431)
(same as Knowles)

Koenig, Oscar (606)
CP second front manifesto—DW July 26, 1942

Kontrick, Harry (626)
(same as above)

Korman, Fred (427)
CRC manifesto denouncing indictment of 12 CP leaders —DW September 23, 1948

Kosinski, Henry (232)
Denounced Pres. Roosevelt's use of troops in opening North American Aviation plant—UE News June 25, 1941

Krzyswonos, Stanley (District 4)
CRC manifesto defending CP—TW May 25, 1947

Kuehne, Herman (1111)
Delegate, convention of American Committee for Protection of Foreign Born—Proceedings 1947

Kurtz, Hannah (District 7)
Petition, Citizens Committee to Free Earl Browder— DW March 16, 1942

413 LaMiaux, Ina (1150)
May Day Greetings to CP's Chicago Star—Chicago Star April 26, 1947

Lang, Harvey (1108)
Petition, Citizens Committee to Free Earl Browder— DW March 16, 1942

Larkin, Edwin D. (155)
CRC manifesto on indictment of 12 CP leaders—DW September 23, 1948

Larkin, Joseph (District 6)
CP Peace Proclamation—DW January 4, 1940

LaRonca, Frank (District 2)
Member, Committee for Wider Understanding with Soviet Union—DW August 25, 1941

Lawrence, George H. (District 4)
CRC manifesto on CP—TW May 25, 1947

Lees, Dorothy (1154)
CRC manifesto defending CP—TW May 25, 1947; May Day greetings to Chicago Star—CS April 26, 1947

LeFavour, Philip (271)
20th anniversary greetings to DW—TW January 9, 1944

Lemarese, John (1227)
Supported Israel Amter for Governor on CP ticket—DW October 27, 1942

Lerner, Nathan (1225)
Signed telegram for Citizens Committee to Free Earl Browder—DW December 28, 1941; Signed petition for Citizens Committee to Free Earl Browder—TW January 25, 1942

Leto, John (103)
Barred by the Joint Army-Navy Air Force Board from entering classified areas of RCA plant in Camden, N.J.; Member of International Workers Order, Italian Lodge No. 2656; Member of Communist Party—confidential information

Lewis, Glover (907)
Endorsed Michigan Herald—MH August 31, 1947

Lindman, Oscar (1139)
Member, Minnesota State Committee to Free Earl Browder—DW November 8, 1941; Petition, Citizens Committee to Free Earl Browder—TW January 25, 1942

Lizzano, Tony (409)
CRC petition on CP—TW May 25, 1947

Lochner, William (623)
CP second front manifesto—DW July 26, 1942

414 Lofgren, Ragnar (1150)
May Day greetings to Chicago Star—CS April 26, 1947

Lowe, S. (626)
CP second front manifesto—DW July 26, 1942

MacLaren, Charles (441)
May Day greetings to DW—DW April 28, 1946

Majors, T. Louis (IR)
Signed petition of National Federation of Constitutional Liberties, January 1943.

Mance, Frank (721)
Petition, Citizens Committee to Free Earl Browder—DW March 9, 1942

Mandarino, Thomas (451)
CRC manisfesto on CP—TW May 25, 1947

Marcum, Charles (754)
(same as above)

Marcus, Ralph D. (709)
(same as above)

Martin, George (441)
May Day greetings to DW—TW April 28, 1946

Martindale, M. E. (1150)
May Day greetings to Chicago Star—CS April 26, 1947

Martinson, H. M. (FO)
CRC manifesto on CP—TW May 25, 1947

Massa, Leon (District 2)
(same as above)

Matone, Dan (623)
CP secon ' front manifesto—DW July 26, 1942

Mattia, Mary (District 4)
Sent greetings to Soviet women on International Women's Day—TW March 8, 1942

Mauch, Frank (721)
Sponsored Schappes Defense Committee—DW October 13, 1941

McDonald, Claude (1152)
Signed petition of Natl. Federation for Constitutional Liberties, January 1943

McEntree, Pat (441)
May Day greetings to DW—TW April 28, 1946

McGillicudy, Neil (District 2)
CP second front manifesto—DW July 29, 1942; Identified as CP member by Joseph Julianelle before Un-American Committee July 24, 1947

McNaughton, Robert (District 11)
Petition, Citizens Committee Free Earl Browder—TW January 25, 1942

415 Meadows, Jerry (907)
Endorsed Michigan Herald—MH August 31, 1947

Melvin, Harry (623)
CP second front manifesto—DW July 26, 1942

Meredith, Richard (623)
CP second front manifesto—DW July 26, 1942

Metcalfe, John A. (601)
(same as above)

Meyers, Jack (138)
Denounced Pres. Roosevelt's use of troops to open North American Aviation plant—DW June 17, 1941

Miller, Harold J. (1131)
Petition, Citizens Committee Free Earl Browder—TW January 25, 1942

Miller, William H. (1207)
Member, NY trade union committee Free Earl Browder—DW February 5, 1942

Mintz, Robert (UE Hartford)
Member, Hartford Committee Free Earl Browder—DW October 15, 1941

Mitchell, John (FO)
CRC manifesto on CP—TW May 25, 1947

Moritz, Michael (1227)
Sponsor of Labor Committee for Amter—lettered 1942

Muller, Edward (District 4)
Signed CP manifesto demanding "second front"—DW August 1, 1942

Mulock, John (California)
Signed petition of Citizens Comm. Free Earl Browder—SW January 25, 1942

Muriello, Marie (437)
CRC manifesto defending CP—DW May 25, 1947

Narushef, Teddy (441)
Sent May Day greetings to DW—TW April 28, 1946

Nash, James A. (903)
Expelled from Indiana I.U.C. for refusal to follow CIO policy on Progressive Party—Chicago Star, March 27, 1948

Newell, Charles (IR)
Signer of statement defending CP—DW March 5, 1941

Ober, Bebe (768)
CRC manifesto defending CP—TW May 25, 1947

O'Brien, Joseph (277)
(same as above)

416 O'Hare, Arthur (District 4)
CRC manifesto defending CP—TW May 25, 1947

Olson, Rudy (1146)
(same as above)

Pagnotta, Robert (1225)
Treasurer of Citizens Committee to Re-Elect Peter V. Cacchione—DW August 3, 1945

Paradise, John (417)
CRC manifesto defending CP—TW May 25, 1947

Parker, Frank (District 2)
(same as above)

Peck, Charles (441)
May Day greetings to DW—TW April 28, 1946

Pergollizzi, Anthony (441)
May Day greetings to DW—TW April 28, 1946

Perillo, Vincent (1227)
CRC manifesto on CP—TW May 25, 1947

Persily, Joseph D. (1114)
Instructor, Abraham Lincoln School—Fall Program 1943

Petryk, Gene (149)
CRC manifesto on indictment of CP leaders—DW September 23, 1948

Phillips, D. E. (710)
(same as above)
Piegdon, Walter (441)
May Day greetings to DW—TW April 28, 1946
Pipe, William (UE Los Angeles)
Petition, Citizens Committee to Free Earl Browder—TW January 25, 1942
Pohley, Louise (935)
Endorsed Michigan Herald—MH August 31, 1947
Pope, Helen (UE Dayton)
CRC manifesto on CP—TW May 25, 1947
Rogerson, Roy (277)
(same as above)
Romeo Vincent J. (243)
(same as above)
Rooney, George H. (District 4)
(same as above)
Rosato, Joseph (1225)
Member, Citizens Committee to Re-elect Peter V. Cacchione—DW August 3, 1945
Ross, Frank (735)
CRC manifesto on CP leaders—DW September 23, 1948

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417 Filed January 19, 1951

Supplemental Affidavit in Support of Motion to Dismiss Indictment on the Ground that the Grand Jury was Illegally Constituted

[Supplemental Affidavit stricken for the reason that it is legally insufficient. Objection noted. James R. Kirkland, Judge. January 19, 1951.]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss:*

DAVID SCRIBNER, being duly sworn, deposes and says:

I am one of the attorneys for the defendant herein.

This supplemental affidavit is in further support of the motion to dismiss the indictment, on the ground that the

Grand Jury which voted the indictment was illegally constituted as to this defendant.

Since the date of my affidavit of December 16, 1950, heretofore submitted in support of this motion, I have ascertained and assert, upon information and belief, that in addition to the ten government employees who were members of the Grand Jury which voted the indictment herein, referred to in my former affidavit, there were two Grand Jury members whose husbands were federal government employees at the time the said Grand Jury considered and acted upon the indictment of this defendant.

The defendant respectfully requests that the indictment should be dismissed herein for the reasons given in my former affidavit in respect to the government employment of grand jurors, as supplemented by the information herein with respect to two additional members of the Grand Jury, and with respect to the miasma of fear as it affects government employees. The following individuals were members of the Grand Jury which indicted the defendant herein, and who were employed by the federal government: Laura M. Boyd, Robert G. Dorrity, William H. Floyd, Harry Lee Gray, Charles A. Lickner, Ralph A. Montgomery, Thelma G. Nelson, Raymond D. O'Brien, James P. Perry, James J. Worthington. Mrs. Ida Mary
418 Waldron, wife of a federal employee, and Mrs. Inez Bryant, wife of a federal employee, were also members of this Grand Jury.

In the alternative, defendant requests that the Court direct that a hearing be held pursuant to Rule 12(b)(4) of the Federal Rules of Criminal Procedure, so that defendant may prove that more than 11 of the grand jurors were biased and prejudiced against the defendant.

Government employees for the past few years have been the subject of an active campaign to determine whether they are in any way sympathetic or tolerant to "Communism" or "Communists," or sympathetic to any person who in turn is associated with "Communism" or "Com-

munists" or with organizations which have been called "Communist Fronts" or with persons who may have been called "Communist fellow travelers."

This has developed a miasma of fear among government employees in the District of Columbia. Congressional leaders and congressional committees and the heads of the various federal executive agencies have called for or engaged in efforts to "purge" from government employ persons found to be so stigmatized. As a class federal government employees cannot exercise the degree of impartiality required by the Constitution and the statutes in the carrying out of their functions as grand jurors in a case such as the one at bar, where the defendant is charged with an offense related to the investigation of "Communist" influence.

The issue involved in the investigation by the House Un-American Activities Committee which led to the contempt charge herein, related, according to the Committee itself, to the "infiltration" of Communists in labor unions and particularly in the union of which the defendant is a member or officer. This is the very Committee which has given much time and consideration to the investigation of alleged Communist influence among federal government employees and has announced time and again that the Committee files have been used by the investigative agencies of the federal government to determine the loyalty of federal government employees. (Report of the Committee on Un-American Activities to the U. S. House of Representatives, 80th Cong. 2nd Sess., Investigation of Un-American Activities in the U. S., p. 22, attached to the affidavits of Quinn, Panzino and Fitzpatrick, respectively, as Exhibit 7.)

419 Federal government employees reasonably come to the conclusion that it would endanger their job tenure with the government if they in any way acted in a manner which could be considered to be a sympathetic attitude toward or treatment of a person accused of an offense arising out of an investigation of Communist activ-

ities. That would certainly be true of federal government employees who are members of a grand jury where their employer, the United States Government, is the prosecutor, and where the offense is related to the investigation of Communist activities.

That a citizen in the impartial execution of his civic duties may have a cloud of suspicion as to his loyalty arise is demonstrated most vividly by the reaction against the presiding Justice in the first Hiss trial. Following the conclusion of that case in which the jury could arrive at no conclusion, members of Congress introduced a resolution demanding the investigation of Justice Kaufman, impugning his loyalty solely because he attempted to exercise the functions of his office to the best of his ability. Furthermore, one of the jurors who had refused to vote for conviction against Alger Hiss was required to appeal to the law enforcement agencies for protection from those individuals who were harassing him because of that vote.

Only recently, when the Circuit Court of Appeals for the 9th Circuit granted bail to Harry Bridges, who was accused of perjuring himself with reference to Communist affiliation, U. S. Senator Langer on the floor of Congress demanded an investigation of those respected jurists. It is in this atmosphere that a juror must attempt to arrive at an impartial and independent judgment of the facts. Difficult as it is for any citizen, it is well-nigh impossible for federal employees.

For a number of years, federal employees have been subjected to loyalty oaths and tests and investigations of any possible sympathetic association with Communists, or beliefs allegedly of a Communistic nature. However, with the adoption of the President's Loyalty Order of 1947, Executive Order 9835, federal government employees were subjected to the most intensive and searching investigation of their political beliefs and associations for the purpose of ferreting out and discharging those who were found, in the words of the President's Loyalty Order (Point V, Section 2), to have

420 "F) Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association with any foreign or domestic organization, association, movement, group or combination of persons designated by the Attorney General as totalitarian, communistic, fascist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons from rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means."

In addition, the Attorney General was authorized to establish lists of organizations characterized by him as being "Communist," "totalitarian," "subversive," etc. Membership in or association with any such organizations was to be given serious consideration to ascertain whether a federal employee was loyal to the government or whether he should be dismissed from its employment. The Federal Bureau of Investigation was given the responsibility of investigating the loyalty of federal employees.

The very adoption of the Loyalty Order and the appointment of a Loyalty Board created a hysteria among government employees which in turn was reflected by and encouraged in the Washington public press and radio. Prominent citizens and leaders of the community throughout the nation attacked the Loyalty Order because of its lack of specifications or limitations. It was pointed out time and again that the Loyalty Order and what it implied would not only create an unhealthy terror in the minds of persons already employed by the government, but would prevent many loyal Americans from entering the government service under the ugly conditions implicit in the Loyalty Order and its proposed operations and functioning.

On the other hand, many others in the public eye, including a substantial part of the press, freely voiced their opinions for public consumption that employees of the federal government should in fact be subjected to the most rigorous and unlimited kind of investigation and interrogation

as to their state of mind in respect to their political beliefs, opinion and associations, no matter how far removed, and that if there was any question whatsoever or any doubt about what they considered to be "loyalty," the culprits should be summarily dismissed from their employment and in fact blacklisted.

Attached hereto as exhibits are typical comments as reflected in the press on the Loyalty Order. From the very day that the Loyalty Order was considered, the public press daily, and particularly in the District of Columbia, featured any news relating to the so-called "Loyalty Program" as it affected government employees and highlighted the evils or the benefits of such a program. What
421 is significant is that these very conflicting points of view in and of themselves engendered further fears and an apprehension among government employees in respect to the retention of their jobs as a means of livelihood (Exhibits 1, 2, 3, 4, 5, 6, 7 and 8).

The Report of the President's Committee on Civil Rights, 1947, page 51 states:

> "An employee whose loyalty is questioned is not charged with a crime. But loss of job and inability to obtain another one is a severe punishment to impose on any man. Accordingly provision should be made for such traditional procedural safeguards as the right to a bill of particular accusations, the right to subpoena witnesses and documents . . . where genuine security considerations permit . . . the federal government must maintain a loyalty program which adequately protects the civil rights of its employees."

On page 101, referring to the Loyalty Program, the Report states:

> "The freedom of opinion and expression enjoyed by these people is in many ways dependent upon the attitudes and practices of the government."

Government employees recognized, as indeed they might, that as Circuit Judge Edgerton stated in his dissent in the *Bailey* v. *Richardson* case, 187 F. 2d 46, App. D.C.

> "Ostracism inevitably followed a dismissal . . . a disloyalty finding is closely akin to a finding of treason; the public hardly distinguishes between the two."

The actual functioning of the Loyalty Review Boards hardly dispelled the fears that were reasonably entertained by federal government employees.

At the very time that the Grand Jury in the instant case was considering whether to return indictments against this defendant, and almost a month before the indictments were actually returned, the U. S. Civil Service Commission reported publicly that 280 government employees had already been dismissed as security risks under the Federal Loyalty Program; that 13,202 employees had been the subject of full and complete investigation by the Federal Bureau of Investigation and other agencies; that 1,593 federal employees had resigned while under FBI investigation, and 1,171 federal employees had left their government jobs before the Loyalty Boards had completed their hearings.

This information could certainly not have been any comfort to the 10 government employees who were members of the Grand Jury which returned the indictment against this defendant or for the 2 housewives on the federal Grand Jury whose husbands were government employees. Out of the 23 members of the Grand Jury, 12, a majority, had reasonable grounds to fear that if they did not act in accord with the wishes of their government, personified by the federal prosecutor who presented the case for the
422 government, they would become numbers in a list of those investigated or discharged by the federal government for "sympathetic association" with Communists or those accused of Communist beliefs or engaging in Communist activities and would thereby lose any source of livelihood for themselves and their families.

It became apparent that the only way that a government employee could possibly hope to safeguard his livelihood and the security of himself and his family was to express a hostility to any person, idea, or activity which could in any way possibly be construed to be of a "Com-

munist" character. As a matter of fact, this was apparently made a requirement by those who were carrying on the so-called Loyalty Program. The hearings conducted by the Loyalty Review Board, which became the subject of common gossip and conversation among government employees in the District, corroborated this as a requirement. The most searching questions into the minds and the attitudes of government employees who were the subject of the investigation, or government employees who appeared as witnesses in these hearings, were a common routine at these hearings. For instance, a Chairman of a Loyalty Board made the following formal statement in respect to his understanding, as one charged with enforcing the Loyalty Program, of what loyalty meant. He said,

> "Loyalty to the United States is an instinctive matter. It is a matter of the mind and of the heart. I believe the way that one speaks an opinion on matters of strengthening the permanency of this government and protection of it are instinctive. It seems to me one ought to know right off at once how he feels about matters affecting the continuance and preservation of our form of government, and that no one, it strikes me, individually ought to require time to make up his mind as to how he feels on a question like that."

Federal government employees had the privilege of reading in the daily press not only of the possible attacks on their loyalty through Loyalty Review Boards, but the constant and repeated investigations of the House Un-American Activities Committee and other committees of Congress into the loyalty of government empolyees. (Hearings regarding Communism in the District of Columbia, Part I, Hearings before the Un-American Activities Committee, House of Representatives, 81st Con., 1st Sess., June 28, 29, July 6, 12 and 28, 1949; Hearings regarding Communism in the United States Government, Part 1, Hearings before the Un-American Activities Committee, House of Representatives, 81st Cong., 2nd Sess., April 21, 25, 29, May 4, 5, and 6, 1950; July 30 and Aug. 7, 1948; June 8,

1950; Export Policy and Disloyalty, Hearings before the Investigation Subcommittee of the Committee on
423 Expenditures in the Executive Departments, U. S. Senate, 80th Cong., 2nd Sess., July 30, 1948; Hearings before the Committee on Un-American Activities, House of Representatives, 80th Cong., 2nd Sess., Hearings Regarding Communist Espionage in the U. S. Government, Part II, December 7, 8, 9, 10, 14, 1948.)

Certain members of Congress repeatedly accused,—and with a great deal of attendant local and national publicity, —administration officials from the President of the United States down to the lowliest supervising officer of a government department of harboring government employees whose loyalty was in serious question. This attack brought with it the answer by officials of government that the accusations were not warranted and that in fact the government was constantly investigating its employees and weeding out those whose loyalty was in question.

Nor was it much of a comfort to federal government employees to learn that the FBI was engaged in the greatest manhunt among federal civil servants that this country has ever experienced. (Department of Justice Appropriations for 1951, Hearings before the Subcommittee on Appropriations, House of Representatives, 81st Cong., 2nd Sess., pp. 225, 226.)

The director of the FBI himself has affirmed the fact that whenever a federal employee is accused of "Communist affiliation," whether or not such accusations are based in fact, a full-scale investigation is instituted by the Bureau. Malicious accusations, gossip and rumor mongering, therefore, afford a basis for FBI investigation of a government worker. The awareness of such a fact is sufficient to cause a government worker to act in such a fashion that active hostility and lack of tolerance as to those accused of Communism is an evident characteristic of his demeanor, attitudes and actions. (*New York Herald-Tribune,* November 16, 1947, at p. 3.)

The records and public statements of the FBI indicate that it has a fingerprint collection estimated to be in the neighborhood of 112,000,000 individuals; that the FBI has access to records of local police forces; has access to military records, employment rolls in large industrial plants; it exchanges information with industry and industrial associations; the FBI obtains data on the subversiveness of individuals from banks, business houses and railroads, that the FBI keeps dossiers and adds names to its files on the basis of information it receives regardless of the sources; that it utilizes the records and files of the House Un-American Activities Committee.

424 It might be noted that the vast majority of federal workers who are employed in Washington, D. C. reside in the District of Columbia. These employees do not have the right to cast a ballot to elect their representatives in Congress or the President of the United States. The normal channels open to the average American citizen who wishes to express his disapproval of the policies and actions of his government, are not afforded these federal employees. Their community life as well as their employment is controlled and supervised by individuals and agencies against whom they have no recourse.

Under these circumstances a juror who is employed by the government may not render an impartial opinion, particularly in a criminal proceeding such as this. A federal employee serving on a grand jury who failed to indict at the request of the government the defendant herein would have reasonable grounds for fearing that such refusal would be considered evidence in determining whether or not he was loyal to the United States government.

The FBI has investigated and checked every federal grand juror who is a government employee, and that person's employment is conditioned by a favorable report from that agency which is a subdivision of the prosecutor's office, the United States Attorney General's office. Information concerning "loyalty" of federal employees who are grand jurors is available to the Attorney General's office

prior to the time that grand juror is sworn in. And that grand juror remains under the surveillance of the FBI during his period of employment by the government.

Undoubtedly these investigatory activities of the government, the standards used in determining an individual's loyalty by the Loyalty Review Board, the clear policy of the federal government that it is at war with Communism at home and abroad, the demand of the federal government that all participate in this anti-Communist crusade has a two-fold influence upon the grand juror employed by the federal government. He faces an intensive barrage of anti-Communism which inevitably has the effect of promoting hostility against any individuals said to be associated with Communist activities. This has the effect of predisposing such a juror against any defendant who has been so characterized, even though that juror is not aware of any conscious bias against the defendant. Secondly, he must consciously demonstrate an anti-Communist bias whenever confronted with an issue posed as related to Communism. Regardless of his personal predilections in the particular instance, he has reasonable grounds for believing that a vote of acquittal or no indictment could well serve as a basis for further investigation of his loyalty or as evidence to be used in proof of his alleged disloyalty.

425

It is respectfully submitted that the above demonstrates that bias, conclusively presumed as a matter of law, must be attributed to the 12 of the 23 grand jurors who returned the indictment against this defendant and who are themselves government employees or whose spouses are government employees.

The motion to dismiss the indictment on the ground that the grand jury was illegally constituted should be granted, or in the alternative a hearing should be granted the defendant to prove by evidence that the said grand jury was illegally constituted.

DAVID SCRIBNER.

Sworn to before me this 17th day of January, 1951,

DAVID RATNER.

David Ratner, Notary Public, State of New York, No. 41-3211050, Qualified in Queens County, Certs. filed with N. Y., Kings, Bronx and Westchester Co. Clks., Queens, King, N. Y. & Bronx Co. Registers, Commission Expires March 30, 1951.

CERTIFICATE

We hereby certify that we have this 17th day of January, 1951, sent a copy of the foregoing affidavit, by official United States mail, to the United States Attorney and Assistant United States Attorney, addressed as follows:

1. George Morris Fay, United States Attorney,

2. Charles B. Murray, Assistant United States Attorney, Office of the United States Attorney, District of Columbia, Washington 1, D. C.

DAVID SCRIBNER and ALLAN R. ROSENBERG,
Attorneys for Defendant.

426 **Scribner Exhibit No. 1**

Inside Washington:

WHY GOVERNMENT EMPLOYES' MORALE IS LOW

(Copyright, 1947, by The Chicago Sun and
The Newspaper PM, Inc.)

Washington.—Morale among many Government workers is at a low ebb. Chief reason is the continued "loyalty" purge which struck again in the super-secret central intelligence group, where 14 were fired for "security" reasons.

Workers complain they don't know where the ax will fall next, or when they will be called to account for liberal or new deal views. They don't put much stock in reassurances from department heads that their civil rights will be protected. The State Dept. purge has disillusioned them on this score.

The Civil Service Commission is aware of the unrest and the other day in a little-noticed speech in Pittsburgh the Commission president, Harry B. Mitchell, tried to put their fears to rest. Mitchell said that so far as 99 per cent of Government workers are concerned, the loyalty purge is ended.

According to the Civil Service Commissioner the purge was over for the vast majority when their fingerprints and loyalty questionnaire were filed.

"I may be too conservative," Mitchell said, "but my opinion is that not more than a fraction of 1 per cent of the employes will have to be further investigated, and that the persons already known to be disloyal are only a small fraction of the above fraction."

He warned against any action by department heads which would make non-Communist workers with left-wing beliefs the "innocent victims" of the current purge and he added:

"Let us keep in mind that the radicalism of today may become the progressivism of tomorrow and the conservatism of after years."

427 **Scribner Exhibit No. 2**

N. Y. Herald Tribune, November 9, 1947

FEDERAL LOYALTY CHECK IS NO. 1 TOPIC IN CAPITAL

Some Government Employees Are 'Bitter, Upset and Scared,' Others See No Peril to Innocent; Press Criticizes Marshall and Truman

By Bert Andrews

Washington, Nov. 8.—In this city of Washington, where 195,000 of the 2,000,000 civilian employees of the executive branch of the Federal government work and play and talk—talk, that is when they're not too frightened to open their mouths—the burning topic of conversation this week has been the whole problem of security and loyalty.

Always the conversation gets around to one basic question. It can be put this way:

"Is there anything to be alarmed about, as far as the 195,00 employees here and the 2,000,000 altogether and the whole population of the nation are concerned, in the fact that certain State Department employees have been dismissed without ever having been informed of the charges against them?"

There are four schools of thought.

One school, exemplified by some of the top men in the State Department, insists there is no danger that such summary procedure will ever affect the completely innocent.

A second, exemplified by many of the lesser people in the Department, is that a witch hunt is on and that it behooves them to keep quiet least State Department investigators' ears be listening. (One man who left government service after years of work in two departments told this reporter: "I have talked to at least twenty State Department people

in the past few days. They are bitter, upset and scared." This reporter and others in the Washington bureau of the New York Herald Tribune have talked to many more people in the department. All agree with the words "bitter, upset and scared.")

A third is that "so, what?" school—a very small one—which argues that it doesn't make much difference to the mass if a few innocent individuals get hurt, and that suspicion is as good grounds for dismissal as is proof.

The fourth school is perhaps best represented by editorial writers in three Washington newspapers who are demanding, with increasing firmness, that suspicion is not enough and, in the demanding, are strongly criticizing either President Truman or Secretary of State George C. Marshall or both.

Representative opinions from all four schools will be presented here in the form of excerpts from statements, letters or editorials.

A large part of the comment resulted from the publication in last Sunday's New York Herald Tribune of the case history of the investigation and dismissal of a State Department employee who can be described merely as Mr. Blank.

A large part of the comment will be news to President Truman and Secretary Marshall.

Samples of Thinking

Here are samples of the thinking of the schools represented:

School No. 1 (The "no danger" school.)—Secretary Marshall represented this. He acknowledged that eleven employees dismissed had no "true hearing." He said they could not be given the charges because the charges were based on "highly classified material" not under the department's control. He left it doubtful that they could even learn the charges, even on appeal to the new loyalty review boards or the Civil Service Commission.

School No. 2 (The "we're scared" school.—Two letters typical of many received as a result of the Mr. Blank article show some of the mental turmoil.

First letter: "There's a lot more hidden, judging by what I observed in the last year—my last with the government. I saw but few of the 'loyalty investigation' files, but I saw the effects. In agencies covering the country, the subordinate officials who always did the best jobs were the ones terrorized. Terrorized by sudden questioning, to them inexplicable, by two suddenly appearing agents demanding to know: 'Who was with you at that meeting at ——— Street on the afternoon of Aug. 19, 1942? We know you were there. We took your car number.' The victim later drove to that address, which he had never heard of before, and tried to ascertain who lived there. Later I read the long dossier. Since the agency cleared the man, the only inference is that a lot of fabrication went into that case. There has been so much of it that I began to wonder what newspaper men might begin to lift the lid. As you know, fifty years ago France was torn by a social conflict between the powers of government, including generals, and the rights of the governed. The implement then was hysterical anti-Semitism, just as it is now hysterical anti-Communism, and, as now, heightened by the fear of "Military machinations of a foreign power.'"

428 **Scribner Exhibit No. 3**

The Washington Post

Sunday, August 22, 1948

Matter of Fact

WE DON'T WANT 'LOYAL' NUMSKULLS

By Joseph and Stewart Alsop

There is not the slightest doubt that in these times the American Government must have the right to protect itself from attacks from within. Recent reports in this space on the loyalty case of "Mrs. Ann Smith" illustrate how stupidly this right can be abused. Yet the immensely delicate and difficult problem of national security exists, and it must somehow be solved.

No sensible man believes that J. Parnell Thomas' headline hunts can solve it. And anyone who believes that the solution is to be found in the present loyalty program should consider certain questions which the conduct of the loyalty program has posed.

First, there is the whole troubling question of guilt by association. Obviously, a man who has constantly associated with Communists and promoted Communist fronts should not have access to state secrets. But how far should this principle be carried?

The Banker's Blot

Take the recent case of a State Department employe. He was charged with having associated with 10 persons, all presumably suspect. He had never heard of five of them, and had had only the most casual contacts with four. But he had known one of the 10 intimately for several years.

This man was a banker, and stood high in the banking community, a community not conspicuous for its radical tendencies. The State Department man could only defend himself by defending the banker, and neither he nor the banker had any notion why the banker was suspect.

It finally developed that the banker had lived briefly in Albuquerque, N. Mex., several years before, and that an anonymous landlady had reported to the FBI that he kept Communist literature in the basement. On further inquiry, it was established that the Communist literature consisted of accumulated copies of the New Republic which the banker had discarded.

This sort of thing is making the loyalty program a pretty sour joke. Moreover, the case of the State Department man is typical in that in the great majority of cases of guilt by association, at least half the supposed associates are wholly unknown to the accused.

Second, it seems obvious enough that an intellectual pro-Communist, who accepts unhesitatingly the Communist dogma, should hold no sensitive position—this was the sort of individual who figured conspicuously in the Canadian spy case. But again, how far should this principle be carried?

Here are a few verbatim quotes from recent loyalty hearings: "What type of books did your associates have—any political or social economy?" "What kind of books, by title, did you purchase, what kind of literature?" "How many copies of Howard Fast's novels have you read?" "Do you read the newspaper PM?" "Have you a book by John Reed?"

Restricted to Dolts

All government employees know that such questions are asked in loyalty cases, and the assumption that any kind of intellectual or political curiosity provides grounds for suspicion is inevitable. If this country wants a Government service in which ignorance is at a premium, it will doubtless get what it deserves.

Third, does it really matter in America whether a man's maternal grandparents came over from Poland, or whether all his ancestors landed decorously on Plymouth Rock? There have been countless instances when, during loyalty hearings, individuals have been asked where their parents and grandparents were born. An entirely American re-

sponse would be that it was none of the loyalty board's damn business where a man's forebears came from.

Finally, there is the question of confrontation. Take the case of a man who has one item of "derogatory information" in his dossier. His file notes that FBI source X-32 has said that the accused is known to have attended a meeting of high Communist leaders in Seattle. The accused man hotly denies it. The loyalty board has no way whatsoever of knowing whether X-32 or the accused man is lying, and the board knows nothing at all about X-32.

It is the FBI position that to allow those charged to confront their accusers might compromise FBI sources. This seems logical enough. It is also the FBI position that FBI agents should not be allowed to make estimates of the trustworthiness of their sources, and this, too, seems logical. Yet surely loyalty boards which must decide cases certain to affect the whole future of Government employes should know the identity of the sources of their information. They should also, in case of necessity, be able to confront and cross-question such sources in secret.

Obviously, there is no easy solution to the problem of national security. But a government of drones and boneheads and toadies hardly contributes to national security. And if the sort of thing outlined above is allowed to continue indefinitely, that is the kind of government we shall get.

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429 **Scribner Exhibit No. 4**

The New York Times
August 18, 1949

SCIENTISTS SCORE ORDER ON LOYALTY

Association Attacks Concept of Imputing to an Employe Beliefs of Associates

Washington, Aug. 18, 1949 (AP)—The American Association for the Advancement of Science, the world's largest general organization of scientists, today assailed President

Truman's loyalty order affecting Federal employes as "basically objectionable."

The organization also strongly criticized the "security clearance" programs of the National Military Establishment and the Atomic Energy Commission as they affect scientists.

In a report published in the association's weekly journal, "Science," the group noted that Mr. Truman's loyalty order provides that no person shall be employed in a Federal post "if he is believed to be disloyal" to the United States Government.

"No one doubts the importance of faithful discharge of duty by public officials," the report said. "No one questions the propriety of the Government's demanding that its employes be loyal to their jobs and to the democratic institutions they serve.

"The loyalty order is, however, basically objectionable because it seeks to determine the employe's loyalty by inquiring into his supposed thoughts and attitudes, which are established in large part by imputing to him the beliefs of his associates.

Major Changes Sought

"If the loyalty order is to be retained a drastic revision is essential. Instead of focusing on an employe's associations, it should focus on his behavior in overt acts. Legislation already on the statute books amply protects the Federal service against retention of employes who advocate overthrow of the Government."

The association said the Military Establishment's program allowed appeal only to military "tribunal" when a civilian scientist's clearance is disapproved, and it added:

"Such subjection of the destinies of civilians to military tribunals is contrary to national tradition."

Of the AEC's program, the association declared that "work in that field [atomic energy] will be shunned by men of ability and pride if they are constantly treated as objects of suspicion and possible calumny."

The statements were contained in a report drafted by the association's "special committee on civil liberties of scientists." Howard Meyerhoft, secretary of the association, said the report had been ratified by the governing council of the organization, which represents 24,000 members in 211 affiliated scientific organizations.

Exaggeration Is Charged

The report said the Atomic Commission "has recently manifested a tendency to require security clearance not only for those scientists who themselves have access to restricted data, but also for their fellow-scientists with whom they may have personal contact."

"This apparently reflects a yielding to uninformed or sensationalist legislators and others who tend to exaggerate the problem of "keeping our atomic secrets," the report said. "So far as disclosures of evidence reveal, the problem of faithless scientific personnel in this country appears to be markedly less grave than the public has been led to suppose."

In another phase of its report, the committee asserted that "secrecy is damaging to both science and democracy," and added that it endorsed the 1947 report of President Truman's scientific research board which said in part:

"* * * Security regulations * * * should be applied only when strictly necessary and then limited to specific instruments, machines or processes. They should not attempt to cover basic principles of fundamental knowledge."

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430 **Scribner Exhibit No. 5**

Washington Post: Tuesday, April 1, 1947

THE FEDERAL DIARY

By Jerry Kluttz

Loyalty Order Used As Blackjack for Jobs

LOYALTY? An attempt is being made by the unprincipled and the unscrupulous to use the President's loyalty

order as a blackjack to get and keep Federal jobs. This is the sort of thing that's happening:

INCIDENT 1: A job was open in Commerce. The division chief talked with an applicant who wanted to transfer from a dying agency. The applicant appeared qualified and the official told him to return in a few days. Meantime, the chief checked the employer of the applicant, and he got this answer:

"I couldn't possibly recommend that person; he has broken every rule in the books, and if this agency wasn't going to fold up soon I would be compelled to fire him."

When the applicant returned to Commerce, he was told by the division chief that no job was available as it had been decided to abolish the vacant position. The crestfallen applicant went away. But it wasn't long before he returned to the outer office to cry out to several staff members—words he knew would get to the chief promptly:

"Your boss lied to me; he said he didn't have a job open here, and I know he does have. Now I'm going to tell you something—your boss is a Communist, and it's like every Communist to lie, lie, and lie. Unless I get a call damn soon from your boss to tell me that the job here is mine, I'm going to report him to both the House Committee on Un-American Activities and the American Legion and he'll be investigated out of his job."

Many a chief would have weakened under the circumstances. But to his everlasting credit, the Commerce official stood by his guns. He was reported, however, as both a Communist and anti-veteran by the applicant. The official a veteran himself, happened to be acquainted with people in both groups who knew the charges were screwy—but a lot of other loyal and able officials aren't so fortunate.

INCIDENT TWO took place at the State Department. The person involved was given a 90-day temporary assignment which he tried to get converted into a permanent job. As the 90 days neared an end, the employe was told his job was done, and besides, the department didn't have the money to keep him. But the employe wouldn't take no for an answer, and he launched this counterattack:

"I don't like the tone of the reports that are being written in this office," he began, "they are obviously slanted in favor of Russia, and they are written by people who are sympathetic with the Reds. I've been debating," he said, "whether to take this condition to some of my friends in Congress."

Being something of a diplomat, the temporary employe dropped the hint that he could see the reports as fair and objective if his temporary assignment was made permanent.

P.S.: I don't know the final chapter in this story—other than the threats frightened the entire office which merely boils down reports that come into the department the world over.

INCIDENT 3 covers a score or more of agencies. An organization, generally respected, is using a blackjack to run out Government people it doesn't like. So it's using what it believes is an expedient method by calling these people Communists.

The outfit works like this: One of its representatives calls on the department head to give him a list of employes in his agency which it claims are Communists. The demand is made that either the people be fired immediately, or the organization will get a congressional committee to investigate.

CONCLUSION: All this should be a warning to congressional committees and individual members of Congress that they will turn over Government to the crackpots if they listen and follow through on every Communist complaint made to them. In each of the incidents cited above, the cooperation of Congress, or even a single member, is all important to carry out their aims—and this cooperation should never be given without supporting facts.

Fully half a dozen congressional committees are investigating some phase of employe loyalty. What satisfies one congressional committee is objected to by another. The agencies are in a spot where they can't win.

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431 **Scribner Exhibit No. 6**

The Washington Star
November, 1949

OUTDATED RIGHT OF PRIVACY

Loyalty Checks Seen Making Business Of Citizen That of Government, Too

By Thomas L. Stokes

The times are out of joint for some of us around here of another generation who were raised in the tradition, and crusaded for it, that American citizens are entitled to privacy of their opinions and beliefs and could think and say what they pleased without being molested or spied upon or subjected to eavesdropping by minions of the law.

But it's a new world, not a brave new world, nor even the more comfortable world before our two global wars and their so-called "ideological" conflicts, but a world of fear and distrust. We'll probably have to get used to it and keep our mouths shut, but we don't have to like it.

These observations, which are philosophically resigned, are provoked by two recent developments here showing the temper of our times.

One is the movement for a permanent Federal loyalty program to pass upon Government employes. It started over in the Pentagon where our military brass throws its weight around as if the war still were on and now has the approval of Seth Richardson, chairman of the Loyalty Review Board appointed by the President, which has about finished its job of combing through the nearly 3,000,000 Government employes in its search for "disloyalty."

Wire Tapping Approved

The other is Attorney General McGrath's acquiescence, after a review of FBI wire tapping methods and procedures, to continue wire tapping. It is known that the Attorney General, soon after he took office, was inclined

to favor ending this practice, though he reserved final opinion until the review which he now has made.

Wire tapping, as now practiced, is presumably restricted and circumscribed. It can only be done after approval of the Attorney General in each specific case and is supposed to be confined to cases of espionage, sabotage and kidnapping under a rule of thumb laid down by former Attorney General Francis Biddle.

It came back into use for war purposes and was approved by the late President Roosevelt. The war is over. But the present Attorney General bases his certification for continuance on "the emergency which still prevails and the necessity of protecting the national security." That obviously means the so-called "cold war" which, of course, may continue for some time. Arnold Toynbee, the famous English historian, figures perhaps half a century.

Evidence obtained by wire tapping is not admissible in courts under a Supreme Court decision which was an issue in the Judith Coplon-Valentin Gubitchev trial in New York where it was revealed that the FBI did lots of wire tapping, including telephone conversations between counsel and client.

FBI Does Investigative Work

Making the loyalty network permanent is involved in a pattern with the FBI and its activities. The FBI does the investigative work for the loyalty board. *Together they constitute a Federal super-police system which seemingly is to go on in our Government. Some of the things that have leaked out of the loyalty board, the prying into private lives, opinions, political activity and reading habits, indicate the danger of abuses in such a system under permanent status, especially with the inadequate legal protections for any one caught up in it, no matter how innocently.*

There is no way to turn the light on it, as there is no way to find out how carefully the FBI uses the wire tapping technique. Such operations are all secret and newspapers have virtually no way of keeping on them that check which is so essential in a democracy.

The exhaustive inquiry into nearly 3,000,000 Government employes found only a handful of "loyalty" risks or, in other words, the Government service was, according to the FBI, 99.6 per cent pure, which seems pretty good. Why could not the ordinary procedures for checking Government personnel, including that of the Civil Service Commission, serve adequately in peace time, as they did for so many years? The commission has ample powers.

But that is perhaps just an oldfashioned idea that takes too little account of the strange fears abroad in the world today which have had a slowly deteriorating influence on American democracy as we of another generation knew it.

Please forgive us old fogies. We'll try to keep our mouths shut and our powder dry.

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432 **Scribner Exhibit No. 7**

WASHINGTON CALLING

By Marquis Childs

Heresy Hunt

To carry out the European recovery program will call for the very best brains in this country. That is one fact about which no one can possibly disagree.

It calls for economic as well as political specialists. Practical men with business experience will be called upon. There will be need, too, for those with academic and theoretical training, familiar with the trend of the long period.

This is part of the responsibility that has fallen on the United States. It goes along with the greatest accretion of economic, industrial and technological power the world has ever seen. We are only just beginning to realize what that responsibility means.

In the light of that responsibility and the demand it is certain to make on our brains and our skills, we cannot afford the kind of witch-hunting that has created something like a crisis in Government. A way must be found to resolve the suspicion and uncertainty which beclond Government service today.

Good men, men with independent minds, will not come into Government service under such circumstances. The financial sacrifice is, in most cases, too great to expect that the citizen will subject himself to having his conscience and his thoughts combed for possible heresy.

The cases that come immediately to mind are those of the 11 State Department employes dismissed because they were believed to be disloyal or because they were "bad security risks." Even if Congress eventually puts the administration of the European Recovery Program in a new agency, the State Department is certain to need able new recruits.

Yet employes of the department are subject to dismissal without being given an opportunity to know the cause. Bert Andrews of the *New York Herald Tribune* performed an important service in presenting one of these cases in detail, protecting, of course, the identity of the individual involved.

The documents in that case showed how tenuous were the grounds for the man's dismissal. He was shadowed for eight months by the FBI. Yet what they found, insofar as it was revealed by the questions asked of the individual, was vague and shadowy. Most of the questions dealt with associates whom he had seen at infrequent intervals.

In June of 1945, five men and one woman were taken in an FBI raid. Two of the men were State Department employes and one a naval officer whose loyalty had never hitherto been questioned They were stripped and treated like common criminals.

The charges against the three proved baseless. A grand jury subsequently cleared them for lack of evidence. The damage of publicity had, of course, seriously harmed them and there was no way in which they could be compensated for this damage.

But at least they were cleared. The public could know that, after due legal process, they were found to be without guilt.

The recent loyalty dismissals were harsher and more cruel, particularly since potential employers are told that the dismissed men were found to be "bad security risks." The State Department permitted three of them to "resign without prejudice," and now has granted the same permission to seven others because, through a technicality, their cases do not come under the jurisdiction of the recently appointed Loyalty Review Board.

The department states that it is taking steps to insure that, in the future, its employes will have the right to appeal to the Loyalty Review Board. However, review by the 20-man board is bound to be slow and cumbersome. Delays will work hardships on individuals and will impede the whole process of Government.

The heresy hunt has already had that effect. Government agencies seeking new employes for specialized jobs find that getting them cleared is an interminable business.

One agency recently sought to employ a young economist. He had a good combat record in World War II, with several citations for bravery under fire. But the report from the Civil Service Commission cast doubt on him because five years before the war, when he was just out of college, he was "in association" with the "Communist-dominated" American Civil Liberties Union. The American Mission to Greece also has been hampered in assembling a suitable staff by the cumbersome security machinery in the State Department.

The whole thing can be put simply. We will not be able to do the job that is ours in the world today if we do not cure ourselves of the current case of jitters. Those who are exploiting it for political purposes are playing directly into the hands of the Communists who would isolate America. It is long past time to apply plain common sense.

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433 **Scribner Exhibit No. 8**

Washington Post December 30, 1947

FLAXER HITS LOYALTY TEST DIRECTIVES

Abram Flaxer, president of the CIO United Public Workers, last night charged that the rules issued Saturday by the Loyalty Review Board are "mere window dressing" for police state procedures.

"It is obvious," he said in a statement, "that a facade of sham hearings and procedures have been erected to hide the real situation—that a police agency, the Federal Bureau of Investigation—now has sole and exclusive authority to render judgment on the loyalty of Government employes.

"The public had been led to believe the appointment of this board would result in the establishment of procedures guaranteeing Government employes the basic civil rights all Americans have enjoyed under our Constitution . . . The board has done nothing to allay the just suspicions which had previously been expressed . . .

"Of what use are three hearings or appeals if the accused is denied the right to confront the witnesses against him and deprived of the right of cross-examining such witnesses? . . .

"The hearings and appeals boards are in the same position as a jury in a murder trial that has been instructed to find the accused guilty on the basis of nothing more substantial than a secret report from the chief of police saying that he has information as to the guilt of the accused from an anonymous witness whose identity cannot be disclosed. . . ."

The New York Times
December 29, 1947

FORTAS CRITICIZES LOYALTY METHODS

Special to The New York Times

Washington, Dec. 28—Procedures for testing the loyalty of Government employes announced yesterday by the new Loyalty Review Board drew the criticism tonight that they raised "serious problems" in the safeguarding of constitutional liberties.

Abe Fortas, former Under-Secretary of Interior, predicted that under the board's rules the right of an accused employe to be accompanied by his lawyer when appearing before the board would be "largely empty."

Mr. Fortas is one of three attorneys and former high officeholders who represented six State Department employes when they were dismissed for security reasons last summer.

"It is doubtful if a lawyer can be of very much help to a person accused of disloyalty if he is to be denied the right to confront his accusers, or the opportunity to cross-examine witnesses," Mr. Fortas commented. He also charged that the board's decision not to disclose to the accused the sources of its evidence was in violation of the Bill of Rights.

Mr. Fortas attacked particularly the board's rule that accused persons would not be permitted at any time to inspect any report made against him by the Federal Bureau of Investigation, which will do virtually all the investigative work in the Government's unprecedented loyalty program.

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434 Filed January 12, 1951

Motion to Strike Certain Documents Filed in Support of Motion to Dismiss

The United States moves to strike the following documents filed herein in support of the motion of the defendant

for dismissal of the indictment and for other appropriate relief:

Affidavit of Albert J. Fitzgerald
Affidavit of Julius Emspak
All Emspak Exhibits (1-13 inclusive)

The ground for this motion to strike is that the material referred to is not appropriate to be considered in connection with pre-trial motions; is not part of the record; and is not subject to judicial notice.

GEORGE MORRIS FAY,
United States Attorney

CHARLES B. MURRAY,
Assistant United States Attorney

435 NOTICE

To Messrs. Rosenberg and Scribner
Attorneys for Defendant

Please take notice that the foregoing motion to strike will be called to the attention of the Court at the time of the hearing on the motion of the defendant to dismiss the indictment and for other appropriate relief.

CHARLES B. MURRAY,
Assistant United States Attorney

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436 Filed January 19, 1951

Order

Upon consideration of the Government's motion to strike the affidavit of Albert J. Fitzgerald, the affidavit of Julius Emspak, and Exhibits Nos. One to Thirteen, inclusive, and upon argument of counsel, it is by the Court, this 19th day of January, 1951,

ORDERED that the above-named affidavits and exhibits be and the same are hereby stricken, for the reasons that said affidavits and exhibits have no probative value or evidentiary force, are immaterial to a consideration of the motions before the Court, and are not in due and proper form. The Court will not go beyond the allegations of the indictment and the pending motions to consider evidence which should be properly raised at the trial of the general issue; therefore, the motion to strike is hereby granted. Objections thereto are noted on behalf of the defendant.

JAMES R. KIRKLAND,
Judge

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437 Filed January 26, 1951

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK ..... Criminal No. 1742-50
THOMAS J. FITZPATRICK ..... Criminal No. 1743-50
THOMAS QUINN ..... Criminal No. 1744-50
JAMES J. MATLES ..... Criminal No. 1745-50
PHILIP BART ..... Criminal No. 1746-50
FRANK PANZINO ..... Criminal No. 1747-50
TALMADGE RALEY ..... Criminal No. 1748-50
PASQUALE L. J. BRANCA ..... Criminal No. 1749-50
CLARENCE HISKEY ..... Criminal No. 1750-50
ESTHER TICE ..... Criminal No. 1751-50
FRANK HASHMALL ..... Criminal No. 1752-50
LOUISE BERMAN ..... Criminal No. 1753-50
STEVE NELSON ..... Criminal No. 1796-50
GIOVANNI R. LOMANITZ ..... Criminal No. 1797-50
MARCEL SCHERER ..... Criminal No. 1799-50
DAVID J. BOHM ..... Criminal No. 1824-50

Order and Opinion

The above defendant was one of sixteen indicted by the Grand Jury of this Court for contempt of Congress (2 U. S. Code 192) for failure to answer questions before a duly created sub-committee of the Committee on Un-American Activities of the House of Representatives, pursuant to Section 121 of the Legislative Re-organization Act of 1946, sub-section (q) (2), and House Resolution 5 of the 81st Congress.

438 The defendants have filed motions to dismiss and alternative motions in the several cases for a bill of particulars and to have a hearing to show bias and prejudice on the part of members of the Grand Jury which returned these indictments.

Upon consideration of the argument of counsel, the indictment, and the several motions and memoranda filed herein, it is by the Court, this 26th day of January, 1951.

ADJUDGED, ORDERED and DECREED as follows:

(1) Section 192, Title 2, of the United States Code is constitutional, and does not exceed the bounds of the constitutional power of Congress to investigate in aid of its legislative jurisdiction; nor is it vague and indefinite; nor does it violate the First Amendment to the Constitution of the United States. *Barsky* v. *United States*, (1948) 83 U. S. App. D. C. 127, cert. den. 334 U. S. 843; *United States* v. *Josephson*, (1947) 165 F.(2d) 82, cert. den. 333 U. S. 838, rehear. den. 333 U. S. 858; *Eisler* v. *United States*, (1948) 83 U. S. App. D. C. 315, 170 F.(2d) 273, cert. den. 333 U. S. 838; *Morford* v. *United States*, (1950) 339 U. S. 258, rehear. (1950) —— U. S. App. D. C. ——, 184 F.(2d) 864, cert. den. (Nov. 6, 1950) 71 S. Ct. 130; *Trumbo* v. *United States*, *Lawson* v. *United States*, (1949) 85 U. S. App. D. C. 167, 176 F.(2d) 49, cert. den. (1950) 339 U. S. 934.

(2) Section 121 of the Legislative Re-Organization Act of 1946, sub-section (q) (2), and House Resolution 5 of the 81st Congress creating the House Committee on Un-Ameri-

can Activities, is constitutional. *Barsky* v. *U. S.*; *U. S.* v. *Josephson*; *Eisler* v. *U. S.*; *Morford* v. *U. S.*; *Trumbo* v. *U. S.*, and *Lawson* v. *U. S.*, *supra.*

439 (3) The above indictment does charge an offense under the laws of the United States. It is a good example of a "plain, concise and definite written statement of the essential facts constituting the offense charged." (F. R. C. P., Rule 7(c).) It should enable the defendant to understand the nature of the accusation; it affords adequate notice of the offense with which defendant is charged; it gives defendant the information needed to prepare his defense, and makes it possible for him to plead a judgment in bar of another prosecution for the same offense, and is accordingly legally sufficient. *U. S.* v. *Josephson, supra.*

(4) In the absence of a showing of actual bias on the part of the members of the Grand Jury due to their employment in the Government of the United States or the Government of the District of Columbia, the indictment is not void. *United States* v. *Wood,* (1936) 299 U.S. 123; *Frazier* v. *United States,* (1948) 335 U.S. 497; *Dennis* v. *United States,* (1950) 339 U. S. 162. In a particular case Government employees serving as Grand or Petit Jurors might be barred for implied bias when circumstances are properly brought to the Court's attention which convince the Court that Government employees would not be suitable jurors. No such circumstances are present under the force of the present motion to dismiss, nor were any such circumstances indicated in defendant's proffer of proof in support of the motion for a hearing on the qualifications of the Grand Jurors.

(5) No showing having been made to require the Government to file a bill of particulars, that portion of the motion seeking the same will be denied.

(6) The Court reserves for a further opinion on the force of the motion to dismiss as to whether the indictments charge one or a multiple series of attempts, and

440 also upon the question of whether a witness properly before a committee of Congress who claims his immunity under the provisions of the Fifth Amendment to the Constitution can receive judicial punishment under indictment for contempt of Congress.

It has been suggested that the Court take judicial notice of the proceedings before Congress. However, since the indictment is under attack by a motion to dismiss, the Court will not go outside the record at this time to judicially notice such matters.

All other matters not heretofore expressly ruled upon or reserved for further consideration which have been raised in the several motions to dismiss are accordingly overruled.

JAMES R. KIRKLAND
Judge

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441 Filed January 31, 1951

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK ..... Criminal No. 1742-50
THOMAS J. FITZPATRICK ..... Criminal No. 1743-50
THOMAS QUINN ..... Criminal No. 1744-50
JAMES J. MATLES ..... Criminal No. 1745-50
PHILIP BART ..... Criminal No. 1746-50
FRANK PANZINO ..... Criminal No. 1747-50
TALMADGE RALEY ..... Criminal No. 1748-50
PASQUALE L. J. BRANCA ..... Criminal No. 1749-50
CLARENCE HISKEY ..... Criminal No. 1750-50
ESTHER TICE ..... Criminal No. 1751-50
FRANK HASHMALL ..... Criminal No. 1752-50
LOUISE BERMAN ..... Criminal No. 1753-50
STEVE NELSON ..... Criminal No. 1796-50

GIOVANNI R. LOMANITZ .....Criminal No. 1797-50
MARCEL SCHERER .....Criminal No. 1799-50
DAVID J. BOHM .....Criminal No. 1824-50
FREDERICK V. FIELD .....Criminal No. 1785-50
PHILIP J. JAFFE .....Criminal No. 1786-50
WILLIAM L. PATTERSON .....Criminal No. 1787-50

Opinion

The first sixteen above-named defendants were indicted by the Grand Jury of this Court for contempt of Congress (2 U. S. Code 192) for failure to answer questions before a duly created sub-committee of the Committee on Un-American Activities of the House of Representatives, pursuant to Section 121 of the Legislative Re-organization Act of 1946, sub-section (q) (2), and House Resolution 5 of the 81st Congress; the last three above-named defendants
442 were indicted by the Grand Jury of this Court for contempt of Congress for failure to answer questions before a duly created sub-committee of the Committee on Foreign Relations of the United States Senate which was conducting hearings pursuant to Senate Resolution 231, 81st Congress, 2nd Session. Title 2, Section 192, of the United States Code provides:

> "Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, *willfully makes default*, or who, *having appeared, refuses to answer* any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor * * *." (Emphasis supplied)

Defendants herein have filed motions to dismiss the indictments pursuant to Rule 12 of the Federal Rules of Criminal Procedure.

Each indictment contains several counts ranging up to as high as 68 counts in one case. Counsel for defendants urge that these indictments are duplicitous in that they

charge one crime in several counts and also that they put the defendant in jeopardy of being convicted and punished more than once for the same act. The Government counsel argues that since the statute, 2 U. S. C. 192, *supra,* defines the crime as the refusal to answer "any question", then each refusal to answer a different question would be a separate violation.

In *Upshaw* v. *U. S.,* (1946) 157 F. (2d) 716, the Court set out the test for determining the identity of offenses as follows:

> "And the generally recognized test for determining whether the offenses charged in two or more indictments or in different counts of the same indictment are identical or separate is whether the same proof would sustain a conviction under both or whether each requires proof of one or more facts which is not required of the others. *Blockburger* v. *U. S.,* 284 U. S. 299; *Gilmore* v. *U. S.,* 124 F. (2d) 537." Ibid, p. 717.

As contended by the United States in this pro-
443 ceeding, if a witness refuses to answer any question he has violated the statute. Clearly it is necessary to prove a different fact to sustain the charge for each different question. Applying the above test to the indictments in these cases, the refusal to answer each question must be charged in a separate count since the same proof would not sustain a conviction under each count, and an indictment charging more than one offense in any one count is as defective as an indictment charging a single offense in multiple counts. In several recent cases involving contempt, indictments setting forth the several questions which the defendants refused to answer were held valid. *Alexander* v. *U. S.,* (1950) 181 F. (2d) 480; *Doran* v. *U. S.,* (1950) 181 F. (2d) 489; *Kasinowitz* v. *U. S.,* (1950) 181 F. (2d) 633; *Trumbo* v. *U. S.,* (1949) 85 U. S. App. D. C. 167.

Counsel for defendants go a step further, however, and urge that a conviction on each count would allow the Court to incarcerate some of these defendants for the balance of their lives. Although the problem of the sentence after

conviction is not before the Court at this time, it does appear that a short discussion of this problem as collateral to the allegation of duplicity may be helpful.

Diligent effort on the part of counsel has produced a series of cases which are pertinent here. One of the earliest cases to consider this precise problem was *Maxwell* v. *Rives*, (1876) 11 Nevada 213. In this case the defendant was held in contempt of court for refusing to answer a number of questions. In considering the trial court's action in imposing a separate penalty for each refusal the court said:

> "A penal statute must be strictly construed. Upon that principle at least, if not upon more liberal principles of construction, the mere refusal of a witness to testify on the same trial of the same issue cannot be deemed more than one contempt, no matter how many questions he may refuse to answer * * * The dis-
> 444 trict judge erred in finding that each separate refusal to answer a question was a distinct contempt * * *." Ibid, p. 221.

The Court there cited *People ex rel Tweed* v. *Liscomb*, (1875) 60 N. Y. 559, in which opinion may be found a collection of English and early American cases which involved multiple penalties for a single act.

Recently the United States District Court for the District of Hawaii considered indictments identical in substance to those before the Court now, and that court held in respect to the multiple count indictments as follows:

> "As to objections to the number of counts, the Court is of the opinion that the Government has the right to frame each refusal to answer in a separate count. Rule 8 of the Federal Rules of Criminal Procedure gives that right. However, as the questions appear to be directed all to one subject of inquiry and the answers were simultaneous during the proceedings, and continuous acts, the indictments therefore charge only one alleged offense. *Kerr* v. *Squier*, 151 F. (2d) 308 (Ninth Circuit); *Price* v. *U. S.*, 150 F. (2d) 283-285 (Fifth Circuit); *Upshaw* v. *U. S.*, 157 F. (2d) 716 (Tenth Circuit) strongly indicate that no matter how many refusals to

answer may occur in an examination such as is alleged, the maximum sentence that could be imposed pursuant to the statute involved, Section 192, Title 2, U. S. Code, would be punishment for not more than one refusal." *U. S.* v. *Yukio Abe*, Crim. No. 10,335 (Nov. 17, 1950).

Accordingly, the District Court of Hawaii refused to dismiss the indictments on the ground of duplicity, and deferred ruling on the motion to dismiss until after a trial on the general issue.

Two recent State cases, *Fawick Airflex Co.* v. *U.E.R. & M.W.A.*, (1950) 92 N. E.(2d) 436 (Ohio) and *People ex rel Amarante* v. *McDonnell*, (1950) 100 N. Y. S. (2d) 463, considered a charge of separate contempts for refusal to answer a series of questions. Both courts held that only one contempt was committed and the defendant could receive only the maximum penalty for one contempt after conviction. In the Fawick case, the court rationalized the problem as follows:

"As heretofore noted in this opinion, the appellant was found guilty of three separate acts of contempt based upon his refusal to answer three separate
445 questions.

It appears to the members of this court that the questions were of such character that they should be treated as an inquiry into but one single subject. The first question asked the witness directly was whether he was a member of the Communist Party. When he refused to answer, other questions were then asked, which, if answered in the affirmative, would have established an inference that he was such a member. In fact, the entire inquiry was directed toward the establishment of but one fact. The witness' refusal to answer the three questions under discussion constituted, in the opinion of the members of this court, but a single contempt, for the reason that they all had to do with the same subject matter."

The New York court considered the problem in the same light, saying:

"The question then presents itself as to whether or not by refusing to answer seven questions relating to

the same subject matter the relator was guilty of seven separate and distinct contempts. If this question be answered in the negative, then the County Judge acted in excess of the jurisdiction conferred upon him in sentencing the relator to a term in excess of the maximum provided by law for a criminal contempt.
The court is of the opinion that the relator committed but one contempt. To hold otherwise would enable a prosecutor to ask an unlimited number of questions concerning the same subject matter or even to ask the same question in various forms, with the net result that a witness might be incarcerated for the balance of his life."

The New York statute on contempt is the Judiciary Law Section 750, which reads:

"A court of record has power to punish for a criminal contempt a person guilty of either of the following acts, and no others:

* * * 5. Contumacious and unlawful refusal to be sworn; or, after being sworn, *to answer any legal* and proper interrogatory." (Emphasis supplied)

Title 2, U. S. Code 192, *supra*, uses the word "any" in the same sense as the New York statute, yet the indictment in the Amarante case was not held defective for duplicity. The court in these two cases obviously directed their concept of the singleness of the offense to the imposition of the penalty.

In *Trumbo* v. *U. S.*, *supra*, the indictment was in
446 two counts consisting of two separate questions which defendant had refused to answer. The court, at page 169, said, referring to two defendants, Lawson and Trumbo: "Both trials resulted in convictions and the imposition of the maximum sentence allowed by 2 U. S. C. 192 of one year and $1,000 fine". The court without discussing the problem obviously approved conviction under the two count indictment and also imposed a sentence of the maximum penalty for a single contempt. That decision is binding upon this Court, and it is also well supported as pointed out by the foregoing discussion.

The counts involved in the several indictments under consideration consist of questions which apparently on their face were directed to one single line of inquiry which was the specific phase of inquiry then being considered by the Committee. As noted previously, each question requires proof of a different fact; therefore, the questions must be set out in different counts. This being so, the indictments are not duplicitous. Proof which would sustain any single count will sustain a conviction for contempt as charged. The question of double jeopardy will arise only if a defendant is sentenced on more than one count. Since only one contempt is charged in each indictment, the rationale of the decisions discussed above would seem to limit the sentence to a maximum penalty for one contempt. The objection is academic and premature at this stage, however, but may be raised if a sentence for more than one refusal is imposed.

Counsel have also argued that the claim of protection against self-incrimination embodied in the Fifth Amendment entitles a witness before a Congressional committee to an immunity which will support a dismissal of an indictment charging violation of 2 U. S. C. 192 prior to a trial of the general issue. This contention raises a procedural question, the solution to which requires a consideration of the preliminary facts, which must be established as a matter of law to support the granting of such a
447 motion.

The necessity for the right of a legislature to conduct inquiries as an aid to the legislative process is more critical now than at any time in the history of the world. The complexities of our present economy, the attempts of modern statesmen to achieve international unity and the recurrence of the concept of a balance of power throughout the world render any single group of men incompetent to deal with the legislative process without the aid of detailed inquiries into the fields of prospective legislative control. Such responsibility as falls on the members of our legislatures, demands the authority to compel disclosures of per-

tinent information relative to the requirements of the law making process.

In the formation of the Constitution of the United States, the citizens of the several states were anxious that their individual liberties, so recently gained by the American Revolution and which they had protested to the imperial heads of England, should not be lost in the untried Federal Government which the Constitution established. Accordingly, the first ten amendments were voted at the outset of the ratification of the Constitution, and they apply strictly to the Federal Government. The Fifth Amendment declares:

> "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; *nor shall be compelled, in any criminal case, to be a witness against himself,* nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use without just compensation." (Emphasis supplied)

In the early stages of the development of the common law, a defendant in a criminal case was not permitted to testify nor be represented in court by counsel. When one further considers that the grand jurors were persons who had actual knowledge of commission of crimes in their locality and were assembled in advance of the king's justices, then moving in circuits, one can understand the reluctance of the American colonists to permit the Federal Government to compel a defendant in a criminal case to give testimony against himself. It was anciently established that no person should be compelled to give testimony against himself. This came about as orderly progression of the growth of criminal procedure as a part of the common law. However, it appears to be of a more re-

448

cent origin than the next point to be discussed insofar as the ratification of the Constitution was concerned.

Growing up with the development in the criminal law, but ancient by many years, was the proposition that there was an inherent right in Government to subpoena and inquirie of citizens concerning activities for which legislation was necessary. This information was then, as it is now, vital to the legislative process. The earliest instances of punishment visited by the House of Commons upon contumacious and prevaricating witnesses summoned before Parliamentary inquiries related to disputed elections. The earliest recorded instance appears in the year 1586. Later, in 1604, in Sir Francis Godwin's case, where Parliament was inquiring into election irregularities, it was stated: "Power given in that Case to send for an Officer, and to view and search any Record or other thing of that kind, which may help their Knowledge or Memory in this particular Service". On June 4, 1621, Randolph Davenport was imprisoned for misinforming a committee before whom he was called as a witness. There was a Parliamentary investigation in 1688 into the conduct of the war in Ireland. There also appears to have been legislative power as early as 1789 in the American colonies, and it was well entrenched when the Constitution was ratified. Undoubtedly the framers had its ancient origin in mind as it laid the framework of the American Federal Government.

These two streams of social control flowed parallel
449 to each other in their development through the centuries. This development has been the subject of careful study by many scholars, and is thoroughly discussed in Landis, *Constitutional Limitations on the Congressional Power of Investigation,* 40 Harvard Law Review 153 (1926). It is now well established that Congress has the power to compel pertinent disclosures. *McGrain* v. *Daugherty,* (1927) 273 U. S. 135; also that a Congressional inquiry may be as broad as the legislative purpose requires *Townsend* v. *United States,* (1938) 95 F.(2d) 352; and that

a legislative purpose will be presumed in authorizing a Congressional investigation. *In re Chapman,* (1897) 166 U. S. 661. The pertinency of the evidence is not determined by its probative value, and like the question of relevancy in a trial, it is a question of law; but the witness may be punished if he mistakes the law, since the issue of good faith is not involved. *Sinclair* v. *U. S.,* (1929) 279 U. S. 263. The witness of course must be properly before the committee either by reason of service of process or by voluntary appearance. The procedure before the committee is informal, but precedent has fully established the practice of informing a witness of his rights of immunity at the hearing. A claim of immunity under the Fifth Amendment is personal to the witness. *Brown* v. *Walker,* (1896) 161 U. S. 591.

If there has been any doubt that the Fifth Amendment applies to testimony before Congressional committees, it has been dispelled by many decisions, and in fact, was recognized by Congress itself in 1857 when it enacted an immunity statute, 11 Stat. 155, from which R. S. 859, codified in 18 U. S. C. 3486, stems. It provides:

> "*No testimony* given by a witness before either House, or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, *shall be used as evidence in any criminal proceeding* against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege." (Emphasis supplied)

The avowed purpose of that Act was to "enforce the attendance of witnesses * * * and to compel them to discover testimony". Congress thus sought to compel testimony which might be protected by the Fifth Amendment by granting the immunity of R. S. 859. To this day that section remains virtually as enacted as 18 U. S. C. 3486, untested by Court decision although relegated to a doubtful status by *U. S.* v. *Bryan,* (1950) 339 U. S. 323. In that case

the court considered 859 by analogy to R. S. 860, a statute identical in all material respects with R. S. 859, and which was considered in *Counselman* v. *Hitchcock*, (1892) 142 U. S. 547. The court in this latter case held that R. S. 860 was not an adequate substitute for the protection of the Fifth Amendment regarding self-incrimination. In *U. S.* v. *Bryan, supra,* Mr. Chief Justice Vinson, speaking for the majority of the Court, went beyond the issues involved to indicate that R. S. 859 is no more of a substitute than was R. S. 860. The Congress repealed R. S. 860 in 1910.

On the other hand, immunity statutes have been enacted in regard to administrative hearings which do afford an adequate substitute for the Fifth Amendment. In *U. S.* v. *Eisele,* (1943) 52 F. Supp. 105, decided by Judge Pine of this District Court, a prosecution was barred because of testimony given under the immunity of 15 U. S. C. 77v. (c). Similarly, in *Smith* v. *U. S.*, (1949) 337 U. S. 137, a prosecution was barred by the immunity of 49 U. S. C. 46. The two immunity statutes cited above contain the words "no person shall be prosecuted for or on account of any transaction, matter or thing, concerning which he may testify". This remission of responsibility for criminal acts met the absolute test of the constitutional provision against self-incrimination as early as *Brown* v. *Walker, supra,* and as recently as *Smith* v. *U. S., supra.* This type of im-
451 munity statute is clearly broader than the phrase, "no testimony given by a witness" which is used in R. S. 859. There is no doubt that Congress can elicit self-incriminating testimony from a witness provided the witness is offered, in exchange, an immunity from prosecution which is as broad as the Fifth Amendment.

An exhaustive review of cases which require the immunity statute to be as broad as the protection of the Fifth Amendment is contained in 118 A. L. R. 605. It should also be noted that the Fifth Amendment does not give immunity against a State prosecution, as it does against a Federal prosecution. *U. S.* v. *Murdock,* (1931) 284 U. S. 141.

Questions which do not, on their face, require incriminating answers necessitate placing the burden of proof on the witness to show he had substantial reason to believe they demand answers tending to incriminate him. *Counselman* v. *Hitchcock, supra; U. S.* v. *Rosen,* (1949) 174 F.(2d) 187, cert. den. 338 U. S. 851. Several recent cases have identified specific types of questions as per se calling for incriminating answers. *Alexander* v. *U. S., supra; Kasinowitz* v. *U. S., supra; Blau* v. *U. S.,* 19 Law Week 4062 (Dec. 11, 1950). The Alexander case points out that a question such as "Do you know John Doe?" while not necessarily calling for an incriminating answer, will be held as incriminatory in character upon a showing that any connection with John Doe will subject the witness to a criminal charge of any sort. In addition, the Court is required to take the question in its setting, including other questions asked of the witness. *U. S.* v. *Weisman,* (1940) 111 F. (2d) 260. The witness must specifically claim his privilege under the Fifth Amendment, not merely decline to answer the question. Arbitrary or fanciful claims of privilege, however, will not be sustained.

It is clear by now that numerous aspects of the proceedings must be proved to the Court to allow the Court
452 to intelligently decide the issues which may well resolve themselves into questions of law. For example, the use of newspaper clippings has been sanctioned as admissible to show a reasonable apprehension of incrimination (*Alexander* v. *U. S., supra; U. S.* v. *Weisman, supra*), yet this type of evidence must be received with caution. It will certainly not be noticed judicially but must be introduced subject to objections as to relevancy, authenticity and the usual objections to documentary evidence. On a pre-trial motion to dismiss, similar to the motions presented in the cases under consideration here, Judge Caffey of the United States District Court for the Southern District of New York ruled that the procedure in the resolution directing the certification of a case under 2 U. S. C. 192 to

the United States Attorney would not be considered on a motion to dismiss, but would be reserved as a matter of defense at the trial. His opinion is reported in *U. S.* v. *Josephson,* (1947) 74 F. Supp. 958, affirmed, in an opinion which did not discuss this point, 165 F.(2d) 82, cert. den. 333 U. S. 838. It should also be noted that the U. S. District Court for the District of Hawaii in the case of *U. S.* v. *Yukio Abe,* Crim. No. 10,335 (Nov. 17, 1950), took cognizance of these problems in deferring a ruling on a motion to dismiss identical to those presented here until the trial of the general issue. Nothing but confusion would result from trying these cases in a piecemeal manner. These several motions to dismiss may undoubtedly be raised with propriety during the course of the trial when there is sufficient evidence before the Court to show the incriminating characteristics of the answers as well as the proper claim of immunity. However, the Court is not in a position to resolve the issues as a question of law at the present stage of the proceedings, and the several motions to dismiss are accordingly overruled.

JAMES R. KIRKLAND
Judge

January 31, 1951

Filed February 21, 1950

453 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Criminal No. 1742-50

Waiver of Trial by Jury

Defendant Julius Emspak hereby waives trial by jury in the above entitled matter.

JULIUS EMSPAK

Assented to
CHARLES B. MURRAY
Asst. U. S. Atty.

Approved
F. DICKINSON LETTS
Judge

Dated: February 19, 1951

Filed February 26, 1951

454 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Criminal No. 1742-50

Motion for Judgment of Acquittal

Defendant moves for a judgment of acquittal on the entire indictment and on each separate count thereof on the grounds that

1. the charges in the indictment have not been proven beyond a reasonable doubt,

2. the evidence is insufficient to sustain a conviction of any offense or offenses charged therein,

3. there is no evidence that a valid sub-committee of the House Committee on Un-American Activities was duly appointed,

4. the evidence shows that defendant claimed his privilege against testifying under the Fifth Amendment.

By his attorneys

ALLAN R. ROSENBERG
DAVID SCRIBNER

February 26, 1951

Filed March 1, 1951

455 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Criminal No. 1742-50

Motion in Arrest of Judgment

Defendant moves the Court to arrest judgment herein on the ground that the indictment does not charge an offense; that the Court has no jurisdiction over the subject matter; that there was no duly created sub-Committee of the House Committee on Un-American Activities as alleged in the

indictment, and for all the reasons heretofore urged in Defendant's Motions to Dismiss.

By his Attorneys

DAVID SCRIBNER
ARTHUR KINOY
11 East 51st Street
New York 22, N. Y.

ALLAN R. ROSENBERG
1741 K Street
Washington, D. C.

Filed March 1, 1951

456 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Criminal No. 1742-50

Motion for New Trial

Defendant moves the Court to grant him a new trial, on the grounds,

1. The evidence fails to show beyond a reasonable doubt that he is guilty as charged in the indictment.

2. That there was no duly created sub-committee of the House Committee on Un-American Activities, as charged in the indictment.

3. That he duly asserted his privilege under the Fifth Amendment to the Constitution of the United States against testifying against himself.

4. And for all reasons previously urged in defendant's motions to dismiss, motion for judgment of acquittal, mo-

tion in arrest of judgment, all of which motions are hereby renewed.

By his Attorneys

David Scribner
Arthur Kinoy
11 East 51st Street
New York 22, N. Y.

Allan R. Rosenberg
1741 K Street
Washington, D. C.

Filed March 1, 1951

457 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America

v.

Julius Emspak
Defendant

Criminal No. 1742-50

Charge Vio. 2-192 U.S.C.

Overruling of Motion for New Trial and Motion in Arrest of Judgment

On this 1st day of March, 1951, came the attorney of the United States; the defendant in proper person, and by his attorney, Allan Rosenberg, Esquire; whereupon the motion of the defendant for a new trial and in arrest of judgment,

coming on to be heard, after argument by counsel, each motion is by the Court OVERRULED.

By direction of

F. DICKINSON LETTS
Presiding Judge
Criminal Court No. 1

HARRY M. HULL
Clerk

By C. H. MILSTEAD
Deputy Clerk

Present:

United States Attorney

By WILLIAM HITZ
Assistant United States Attorney

ERNEST MARKWALTER
Official Reporter

Filed March 6, 1951

458 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DIVISION

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

No. 1742-50

Judgment and Commitment

On this 1st day of March, 1951 came the attorney for the government and the defendant appeared in person and by counsel, Allan Rosenberg, Esquire.

IT IS ADJUGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense

of Vio. 2-192 U. S. Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months and to pay a fine of $500.00.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

F. DICKINSON LETTS
United States District Judge.

(*Signed*) ..... (*By*) .....
Clerk. *Deputy Clerk.*

462 **Criminal Docket**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Parties

CASE CLOSED

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Attorneys

U. S. ATTORNEY, ALLAN ROSENBERG and DAVID SCRIBNER, ARTHUR KINOY

G. J. No. Orig.

Criminal No. 1742-50

Charge: VIO. SEC. 192, TITLE 2, U. S. CODE
Bond. 1. $1500 Wm. P. Ryan

Date	Proceedings
1950 Nov. 20	Presentment and Indictment filed (68 counts)
22	Bond fixed by the Court at $1500.00. TAMM, J.
24	ARRAIGNED, Plea NOT GUILTY entered; 25 days, etc.
	Attorney Allan Rosenberg present, appearance entered, filed.
	MATTHEWS, J. Cert. filed 11/27/50
24	Recognizance $1500.00 taken with Wm. P. Ryan, surety, filed.
Dec. 19	Defendant's motion to dismiss indictment and for other appropriate Relief, and Points and Authorities in support thereof, filed.
	Affidavit of Albert J. Fitzgerald, filed.

Date	Proceedings
	Affidavit of David Scribner, filed. (2 affidavits filed)
	Affidavit of Julius Emspak, filed.
	Exhibits 1 thru 13, filed.
1951 Jan. 12	Motion to Strike Certain Documents filed in Support of Motion to Dismiss, filed.
	Memorandum of Authorities in Support of Government's Motion to Strike Certain Documents, filed.
	Memorandum of Authorities in Opposition to Motion to Dismiss Indictment and for Other Appropriate Relief, filed.
19	Defendant's supplemental affidavit in support of motion to dismiss indictment on the ground that the grand jury was illegally constituted and exhibits 1,2,3,4,5,6, 7,8, filed.
463	Contd. on Suppl. Page 1
1951 Jan. 19	Government's motion to strike certain documents filed in support of motion to dismiss granted.
	Order striking affidavits and exhibits filed. KIRKLAND, J.
	Motion to dismiss indictment argued and submitted.
	Supplemental affidavit in support of motion to dismiss indictment on the ground that the Grand Jury was illegally constituted, stricken. KIRKLAND, J.
	Attorneys Allan Rosenberg and David Scribner present.
22	Memorandum of Government supplementary to oral argument, filed.
26	Motions of defendant to dismiss indictment heretofore argued and submitted, Denied.

Date	Proceedings
	Order and Opinion, filed. KIRKLAND, J. (N)
31	Opinion re: Motion to dismiss, filed. KIRKLAND, J. (N)
Feb. 15	Stipulation, Attachment No. 1,2,3,4,5,6,7,8, 9, filed.
19	Appearance of Arthur Kinoy entered for defendant.
	Defendant waives right to trial by jury with consent of U. S. Attorney and approval of the Court; trial by the Court begun.
	Respited until 2-20-51.
	Attorneys Allan Rosenberg, David Scribner, Arthur Kinoy present.
	LETTS, J. Cert. filed.
20	Trial by the Court resumed; case taken under advisement;
	Finding respited to 2-26-51.
	Attorneys Allan Rosenberg, David Scribner, and Arthur Kinoy present.
	LETTS, J. Cert. filed.
23	Government's Reply Memorandum, filed.
26	FINDING of Court—GUILTY as indicted;
	Case referred to the Probation Officer of the Court;
	Defendant committed to District of Columbia Jail; Commitment issued.
	Defendant's supplementary memorandum, filed.
	Defendant's memorandum and Points and Authorities in support of motion for acquittal, filed.
	Attorneys David Scribner, Arthur Kinoy, Allan Rosenberg present.
	LETTS, J. Cert. filed.

Date		Proceedings
	26	Defendant's motion for judgment of acquittal, filed.
Mar.	1	Motion for New Trial and Motion in Arrest of Judgment, filed, argued and overruled. Attorney Allan Rosenberg present. LETTS, J. Cert. filed.
464		Contd. on Suppl. Page 2
1951 Mar.	1	SENTENCED to Imprisonment for a period of Six (6) months and to pay a fine of Five Hundred ($500.00) Dollars; Attorney Allan Rosenberg present. LETTS, J. Cert. filed.
	1	Notice of Appeal, filed. Clerk's Fee $5.00 paid.
	6	Judgment and Commitment of 3-1-51, filed. LETTS, J.
	13	Transcript of Proceedings, Feb. 19, 20, 26, 1951 and March 1, 1951, Pages 1 to 301, filed.
	16	Motion of defendant to transmit original records, filed. ORDER granting defendant's motion to transmit original records, filed. LETTS, J.
	16	Stipulation designating Record on Appeal, filed.
	20	Transcript of Proceedings, Pages 1-154, filed.
Apr.	2	Government's Exhibit No. 1 filed.

465 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK

Criminal No. 1742-50

Order

Upon consideration of the Defendant's Motion to Transmit Original Records and exhibits to the United States Court of Appeals for the District of Columbia Circuit, in connection with defendant's appeal from the judgment of this Court entered March 1, 1951, it is

ORDERED that the same be and hereby is granted.

F. DICKINSON LETTS
District Judge

Dated: March 16, 1951

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1 **Transcript of Proceedings**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

vs.

JULIUS EMSPAK, *Defendant.*

Criminal No. 1742-50

Washington, D. C.,
Monday, February 19, 1951.

The above-entitled case came on for trial at 10:15 o'clock a.m., on Monday, February 19, 1951, in the United States District Court for the District of Columbia, in the Courthouse, at Washington, D. C.

Before:

Honorable F. Dickinson Letts, District Judge of the United States District Court for the District of Columbia.

Appearances:

Charles B. Murray, Esquire, Assistant United States Attorney, in behalf of the United States; and

David Scribner, Esquire, and Allan R. Rosenberg, Esquire, on behalf of the defendant.

2 PROCEEDINGS

The Deputy Clerk of the Court: United States vs. Julius Emspak.

Mr. Scribner: The defendant is ready.

Mr. Murray: The Government is ready, if Your Honor please.

Mr. Scribner: If Your Honor please, we have a jury waiver here which I wish to present to the Court, and which has been signed and consented to by the United States Attorney.

The Court: Yes. It may be filed.

Mr. Rosenberg: Your Honor, may I move the admission of Mr. Arthur Kinoy of the Bar of the State of New York for the purpose of this proceeding only.

The Court: Yes.

You are Mr. Rosenberg?

Mr. Rosenberg: Rosenberg.

The Court: Yes. You will be present throughout the entire case?

Mr. Rosenberg: Yes, sir.

The Court: The admission will be granted for the purpose of this case.

Mr. Murray: May I hand up to the Court a copy of the statute, a copy of the indictment, and a printed copy of the transcript of the proceedings before the committee?

The Court: I see you handed up a copy of the hearing?

3 Mr. Murray: Yes, Your Honor.

The Court: Are there any committee reports that are available?

Mr. Murray: We have no intention of offering any, if the Court please.

The Court: Very well.

Mr. Murray: At this time.

The Court: You may proceed.

Mr. Murray: I might mention to the Court that many formal facts of the case have been stipulated to by counsel, and we thought it would be appropriate for us rather than to read the whole stipulation at this time, to call the parts of it to the Court's attention which relate to the trial as it proceeds.

Mr. Scribner: I have an extra copy of the stipulation. If you wish to follow that from my copy, I will be glad to hand it up to the Court.

The Court: I think we have one in the file here. I have the original here and I will use that.

Mr. Murray: Shall I proceed, Your Honor?

The Court: Yes, Mr. Murray, you may proceed.

Mr. Murray: Your Honor, I might say that the Government plans to call as a witness the counsel for the committee. He is in the courtroom at this time. If no point is made, I will proceed with the opening statement.

4 The Court: Is there any point about that? Do you care to have the witness excluded?

Mr. Scribner: Not at all. I don't think it is necessary.

OPENING STATEMENT ON BEHALF OF THE UNITED STATES

Mr. Murray: If the Court please, the indictment in this case charges, and I am summarizing it, that on December 5, 1949, the defendant, Julius Emspak, appeared as a witness before a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives, holding a session in the District of Columbia, a hearing, and that on that occasion—

The Court: Before the full committee or a subcommittee?

Mr. Murray: It was a subcommittee of one.

The Court: A subcommittee, and the resolution provided for a subcommittee of as little as one?

Mr. Murray: The statute authorized the appointment of subcommittees but didn't specify the number. It didn't limit the number as to minimum or maximum.

We will show in that connection that it is the practice and has been for this committee and other committees, when necessity occurs, to appoint one-man subcommittees.

The Court: Did the resolution authorizing the investigation indicate what a subcommittee should be?

Mr. Murray: No, it didn't. It authorized subcommittees and didn't indicate that a subcommittee should consist of any particular number.

The Court: All right.

Mr. Murray: Your Honor mentioned the resolution.

The particular committee has now become a standing committee and its powers and purpose—

The Court (interposing): Are fixed by statute?

Mr. Murray: Are fixed by statute and by the rules of the Legislative Reorganization Act of 1946 adopted in the Rules of the House of Representatives, and provides as did resolutions when the committee was a special one.

The Court: Yes.

Mr. Murray: The indictment charges that on the occasion when the defendant appeared before its subcommittee that he refused to answer certain questions. The indictment contains 68 counts, listing the 68 questions which it is alleged the defendant refused to answer.

Before calling my witness, I think it appropriate to mention to the Court the issues which it appears now will be disputed.

It is quite certain from preliminary motions and arguments that the defendant in this case will contend that—let me preface that by saying—that the defendant will clearly admit that he did appear as a witness and was asked questions and didn't answer them.

He will claim, we anticipate, that he was right in refusing to answer the questions by reason of the

self-incrimination provision of the Fifth Amendment to the Constitution of the United States.

The Government will contend on that issue that he was wrong in refusing to answer these questions by reason of the fact that he didn't avail himself of the constitutional protection and didn't claim that the answer to any particular question might incriminate him or tend to incriminate him, and that he therefore waived the right at that time when refusing to answer, and that on that ground he lost it for good, and that therefore his refusal was a wrongful one.

Another issue which may be debated—

The Court (interposing): Did he invoke privilege as to each question?

Mr. Murray: As to each question he made a statement which the Government will say didn't invoke any privilege, and which, we anticipate, counsel for the defense may contend, did, but there was no gap in what he said in regard to the questions. He at all times said what he said in relation to each question.

The Government will say that he didn't in what he said make the claim which has to be made when availing one's self of that privilege, and the defendant will say he did do that.

The other issue which can be a matter of dispute will be whether the questions which the subcommittee, through its counsel, Mr. Tavenner, put to the witness and present defendant, Julius Emspak, were questions pertinent to the matter under inquiry by the subcommittee.

In that connection, we will show briefly that the subcommittee was investigating at that time the general subject of infiltration of communism in the labor unions, and in particular into the union of which the defendant, Julius Emspak, was then general secretary, and as far as I know still is, that is, the United Electrical Radio and Machine Workers of America, CIO, which is known usually by the initials UE.

Further on the issue of pertinency, the Government expects to show through Mr. Tavenner that the committee was interested in interrogating Mr. Emspak for the purpose of determining what powers he as an officer, and other named persons, as officers of the UE, what power they had to influence or perhaps control the workers in the unions under them, it having previously appeared to the committee from investigations that in classified defense work it had been the general practice for the Government through its various agencies to cause a loyalty investigation to be made into the workers themselves, the members of the unions, but not in so many instances to cause a similar loyalty check into the officers of the union.

So that they were faced with what appeared to be
8 an inadequate loyalty check, where the subordinates were checked, but those that controlled them were not.

It was the purpose of the subcommittee in the interrogation of Mr. Emspak to show, first that he did have certain powers which could influence and even control the workers, and secondarily, to show in his case, by questions put, his own membership in the Communist Party, and that having these powers, he would be disposed to use them against, rather than for the interests of the United States in its preparations for defense, and in its prosecution of war, if war should come. That is briefly the nature of the Government's showing on pertinency.

We say if we do prove the questions were pertinent, and if we do prove, as we expect to argue, that the defendant made no claim as a witness which would justify him by law or Constitution from refusing to answer, then he wrongfully refused and he is guilty as charged.

Our next step will be to call Mr. Tavenner, unless counsel wishes to make a statement.

Mr. Scribner: May I say a word, too?

The Court: Yes.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

Mr. Scribner: This prosecution is based on the assertion by the Government that the Fifth Amendment is not available to this particular witness before the House Un-
9 American Activities Committee. That is what it adds up to.

The Court: Because of what? What is the reason?

Mr. Scribner: That the Fifth Amendment is not available to this witness before the Un-American Activities Committee. That it what it adds up to.

As a matter of fact, we were surprised to be here this morning at all because we were under the impression that as the result of the ruling of this Court in the recent Russell case, which is easily supported by the cases, particularly those in the Supreme Court, the Blau case and other cases, that there would be no basis for this prosecution. But we are here.

Now, from the statement of Mr. Murray himself it appears to be the position of the Government, to attempt to get support for this contempt proceeding.

What we have in mind is with respect to the apprehension when the answers were made by Mr. Emspak, that the answers would tend to incriminate him.

They were interested in finding out whether he was a Communist, and a member of the Communist Party.

In addition to that, we will have in the record, if Mr. Murray doesn't, all the reports and hearings of the House Un-American Activities Committee and other committees, which were before Mr. Emspak at the time he walked into the House Un-American Activities Committee to participate in that inquiry.

10 I think it will be clear from the record that the assertion was properly made. I don't think that there will be any doubt about it. I think we will be able to show Mr. Emspak constantly referred to his original answer, which was specifically the Fifth Amendment, and

that as far as what the Fifth Amendment meant, that he wasn't subjecting himself to prosecution if he could avoid it, or have Federal prosecution against him.

Judge Kirkland already ruled on one of the motions to dismiss that all the questions were part of one single inquiry, and this entire single inquiry was related to the question of whether or not there was infiltration of communism in this particular union.

We will be able to show that was the purpose at the prior hearing held a few months before in respect to the officers of the union, in respect to some other persons, and to Mr. Emspak himself, as a matter of fact.

We will be able to show that the Russell case is completely dispositive of every factual and legal issue in the case.

I don't want to burden you with that now. We want to go forward with the evidence and the issue will be clear as we go along.

Mr. Murray: Mr. Tavenner, take the stand.

Thereupon,

11 **Frank S. Tavenner, Jr.**

was called as a witness by the United States and, being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Murray:

Q. What is your present position, Mr. Tavenner? A. Counsel for the Committee on Un-American Activities of the House of Representatives.

Q. Are you an attorney, sir? A. I am.

Q. A member of what bar or bars? A. A member of the Virginia Bar.

Q. Will you tell us, briefly, the official positions you have held in the past five or ten years, in a few words? A. I was Assistant United States Attorney for the Western District of Virginia from 1933 to 1940, at which time I became

United States Attorney and served in that capacity until July, 1948.

Q. When were you appointed to be counsel for the committee, Mr. Tavenner? A. I was appointed May 1, 1949.

Q. And you have served continuously in that capacity and are still counsel? A. Yes.

The Court: Mr. Murray, would it be agreeable to
12 counsel if I take a report from the grand jury?

Mr. Murray: Very well, Your Honor.

The Court: Will you step down?

(Thereupon the Court proceeded to other business after which the following occurred:)

The Court: You may proceed, Mr. Murray.

By Mr. Murray:

Q. Mr. Tavenner, I believe you have testified about your previous position, and that your present position, since May, 1949, is counsel for the Committee on Un-American Activities of the House of Representatives; right? A. That is correct.

Q. Did you act as counsel for the subcommittee of that committee on the 5th day of December, 1949, at a hearing at which Mr. Julius Emspak appeared as a witness? A. I did.

Mr. Murray: If the Court please, at this time I should like to direct the Court's attention to the stipulation and two paragraphs, 1 and 3, rather 1 through 3, pages 1 and 2. If the Court wishes to read that, I shall wait. If the Court prefers, I can make a brief statement to summarize it.

The Court: I think you should summarize it, perhaps.

Mr. Murray: It is stipulated in these paragraphs that the full committee of the Un-American Activities Committee of the House of Representatives was appointed
13 by resolution in January, 1949, and that a subpoena was issued for this defendant, Julius Emspak, to appear at a certain date, and that it was served upon the defendant.

And that thereafter, after certain postponements of the date of his appearing, that he did finally appear on December 5, 1949. He did at that time appear before a subcommittee of the Committee on Un-American Activities on December 5, 1949, in Washington, D. C.

By Mr. Murray:

Q. Where was that in Washington, Mr. Tavenner? A. At the hearing room of the committee, in room 226 or 224 of the Old House Office Building.

Mr. Murray: If the Court please, I don't know whether this is a matter of stipulation but I offer an excerpt from the Journal, which I know will be accepted as correct, showing the —

The Court (interposing): Is there any objection?

Mr. Scribner: No objection.

The Court: That will be marked.

Mr. Murray: That is Government No. 1.

(Thereupon the document was received in evidence and marked Government Exhibit No. 1.)

The Court: What does it show?

Mr. Murray: That shows the membership of the full committee, Your Honor.

14 The Court: Yes.

Mr. Scribner: We also have that in paragraph 14 of the stipulation itself.

Mr. Murray: This is a certified copy, Government No. 1, being an excerpt from the Journal of the House of Representatives for January 18 and January 31, 1949, and January 9, 1950, showing that John S. Wood was chairman of the committee and the following additional members were members of the committee.

The Court: As of what date?

Mr. Murray: As I will bring that out.

The Court: You mentioned the 9th.

Mr. Murray: The certification is dated in August 1950. I will question the witness to supply that, if Your Honor please.

The members are listed as John S. Wood, chairman, of Georgia; Francis E. Walter, of Pennsylvania; Burr P. Harrison, of Virginia; John McSweeney, of Ohio; Morgan M. Moulder, of Missouri; Richard M. Nixon, of California; Francis Case, of South Dakota; Harold H. Velde, of Illinois, and Bernard W. (Pat), Kearney, of New York.

By Mr. Murray:

Q. Mr. Tavenner, with this membership, was Mr. Wood chairman on December 5, 1949, if you recall?

15 A. I am certain as to all those, with the exception of Congressman Kearney, and without referring to the records I would not be able to state whether he had become a member of the committee at that time, but I think he did. I think he was a member at that time.

Q. I call your attention to the fact that the excerpt from the Journal, the last one of January 9, 1950, which was a little over a month after this hearing, could that have been the appointment of his successor, Kearney? A. Representative Kearney was appointed as successor to Parnell Thomas. I don't recall the date.

Q. Well, if it happened on this late date, this last dated excerpt of January 9, 1950, Parnell Thomas would be the last named member of this committee instead of Bernard Kearney; is that right? A. He would have been on the committee.

Q. And Mr. Kearney would not have been? A. That is right.

Q. Now, before what subcommittee was this hearing, Mr. Tavenner? A. A hearing held on December 5th was a subcommittee of one, consisting of Representative Moulder.

Q. Now, how had he been appointed, if you know? A. He had been appointed by the chairman. The meeting was held at the time when no other members of the committee were available, and my recollection is the chair-

16 man himself was out of the city, and on November 8th the chairman appointed Mr. Moulder as a committee of one to conduct this hearing.

Q. Now, will you inform the Court, Mr. Tavenner, what he practice is and to your knowledge has been in regard o the appointment of one-man subcommittees by full committees?

Mr. Scribner: May I object to the question? Of course, t would not call for any answer which would have any egal effect in this case. The only question is whether the ppointed subcommittee here was legally authorized. The ractice in a committee does not bind the defendant, or create evidence which would sustain the position of the Government with respect to the validity of the appointment.

Mr. Murray: The practices of the houses of Congress n regard to their internal committee administration are ecognized and honored by the Courts.

The Court: Well, that certainly would be true if the ractice was authorized by rule. Is it otherwise?

Mr. Murray: No. We are unable to state any rule or tatute specifically authorizing it. We are prepared to show t was the practice and not only of this but other committees, and we are prepared to show that there is no resolution, law, or other provision against it.

I remember in the Norris case against the man who happened to have the same name as the Senator, he was investigated by a subcommittee as the result of a single Senator, Nye.

The Court: Well, the Court is of the impression that he objection is good unless you can show at least that the ractice was universal.

By Mr. Murray:

Q. Mr. Tavenner, are you able to say whether the practice of appointing one-man subcommittees, when necessary y the chairman of committees, was universal?

Mr. Scribner: May I respectfully urge my objection and eserve my rights on that?

The Court: Yes, you may.

I want to hear the answer.

A. I could only state with certainty with regard to the practice within the Committee on Un-American Activities, and in some instances, which I am certain I know of, in other committees.

As it being the universal practice in other committees, I don't feel I am competent to testify.

Mr. Murray: Well, I will pursue that with a further question.

By Mr. Murray:

Q. You said other committees. Can you give us an estimate of how many other committees have done it to your knowledge. A. It would be a mere guess.

18 The Court: Well, we do not want that. Do not ask for a guess.

Mr. Murray: Very well.

The Witness: I could only answer by guessing which, of course, I would not do.

Mr. Scribner: May I move now to strike the prior answers with respect to the practice?

The Court: The motion is sustained.

By Mr. Murray:

Q. Mr. Tavenner, at the time the subcommittee of Mr. Moulder convened with you as counsel and Mr. Emspak as witness, did Mr. Moulder make an announcement of his appointment? A. Yes, he did. He read from the letter authorizing him to conduct the hearing, appointing him for that purpose, into the record a statement which he referred to as having been given him under date of November 8th, and the record shows what he said.

Mr. Murray: I offer in evidence at this time, if the Court please, the printed transcript of the proceedings. That will be Government Exhibit 2.

(Thereupon the document was received in evidence as Government Exhibit No. 2.)

The Court: Mark that No. 2.

Mr. Murray: Which it is stipulated is accurate.

Mr. Scribner: No objection to that. I will just move to strike that part of the witness' answer that relates
19 to the letter from which he purported to have read, and what appears in the record, in that record, is now in evidence. What else there may be, I assume, we will find out from the letter itself, if Mr. Murray is interested in it.

Mr. Murray: May I pursue that before the Court rules?

The Court: Yes.

By Mr. Murray:

Q. Answer this yes or no. Did you personally see the letter to which you have made reference? A. I did.

Q. Have you recently before the beginning of this trial made an attempt and caused attempts to be made to find that letter? A. I have.

Q. Have you succeeded in doing so? A. I have not.

Mr. Scribner: May I ask a question on voir dire with respect to that document?

The Court: Yes.

By Mr. Scribner:

Q. Mr. Tavenner, did the letter relate to the purposes for which the hearing was to be called? A. I would not attempt to recall the exact language of the letter. Representative Moulder is ill in the hospital, and I have
20 not been able to find whether he has the letter. His staff has not been able to locate it.

Mr. Scribner: May I respectfully move to strike all the testimony of the witness with respect to the letter, which he does not even have a clear recollection about?

The Court: Sustained.

Mr. Murray: Your Honor, may I have Government Exhibit 2? Your Honor has the copy.

The Court: Yes.

By Mr. Murray:

Q. Mr. Tavenner, I shall now read from the record and ask you questions in regard to the portions I read. I am reading from page 833, the first page of the transcript.

"Mr. Moulder. The committee will come to order.

"Let the record show that on November 8, 1949, the Honorable John S. Wood, chairman of the Committee on Un-American Activities, ordered, authorized, and directed Morgan M. Moulder, a member of this committee, as a subcommittee thereof, to hold, conduct, and preside over hearings scheduled for this day.

"Are you ready to proceed, Mr. Tavenner?

"Mr. Tavenner. Yes."

That ends the reading. Mr. Tavenner, at the time Mr. Moulder made that statement was Mr. Emspak present?

A. He was.

21 Q. Was anyone else there on his behalf? A. I recall that he was represented by his counsel. I believe only one counsel but I am not positive as to that.

Mr. Scribner: I will concede also it was myself representing him at that time, that I was in the courtroom at the same time.

The Witness: That is correct.

Mr. Scribner: In the hearing room of the committee, I mean.

The Witness: That is correct.

By Mr. Murray:

Q. On that occasion and immediately following Mr. Moulder's announcement or at any time thereafter did Mr. Emspak, his counsel, or anyone there, make objection to Mr. Moulder's undertaking to sit as a subcommittee of one?

Mr. Scribner: I respectfully submit that is immaterial.

The Court: He may answer.

A. No.

By Mr. Murray:

Q. Mr. Tavenner, was this an open hearing or so-called public hearing? A. It was.

Q. Now, what was the Committee on Un-American Activities investigating in a general way at the time Mr. Emspak appeared and shortly before Mr. Emspak's appear-
22 ance before Mr. Moulder in December, 1949? A. This hearing was set up for the particular purpose of developing the practices and duties of various officials of the national organization of UE with the idea of determining whether or not there was a difference in practice, in certain Government agencies, in screening or clearing officials of the union for security purposes in plants where the Atomic Energy Commission, or the Army, Navy, and Air Force, were having secret Government projects worked upon.

That was the specific purpose of calling Mr. Emspak, and the next witness who succeeded him was Mr. Matles, as officials of that union, that is, of the national union. It followed the reference to our committee of what was known as the Wood bill, and it was part of an investigation which the committee had undertaken some months prior.

Q. And into what particular subject? A. Into the infiltration of Communist labor unions working on defense projects, from the standpoint of individuals who weren't actually working in the plant but who were officials of the union, as distinguished from those who had actual contact with classified material.

Q. Will you inform the Court very briefly what was the nature of the Wood bill? A. The Wood bill was a bill which made it unlawful or prohibited persons working in defense plants who were members of the Communist
23 Party, and also made it an offense under certain circumstances for people to work in the organization, who were members of the Communist Party, and some provisions of that bill were subsequently written into the Internal Security Act of 1950, as it was recommended by

the committee and reported by the committee, namely, which is part of that hearing, from the Army and from the Atomic Energy Commission, who testified on the practices and interpretations placed by both of those organizations on the law requiring the security clearance for their particular projects, and as the result of which definite recommendations were made to Congress as the result of this testimony.

Mr. Murray: If the Court please, I propose now to read the transcript of the entire proceedings at which Mr. Emspak was a witness.

Now, some of these proceedings do not appear in the indictment. In other words, there were some questions he answered—well, I don't know whether I should take the questions that he answered, if they are not in the indictment, but unless counsel requests I should not read that part, I should like to read it all.

Mr. Scribner: I have no objection to having the entire transcript read.

Mr. Murray: Your Honor, I believe the copy of the transcript that I handed up to the Court has indi-
24 cated in penciling the numbers of the counts.

The Court: Yes. That is No. 2. Let me have that.

Mr. Murray: No, on the copy I gave Your Honor.

The Court: Oh, yes, I see.

Mr. Murray: The first count, Your Honor, appears some five pages after the beginning, on page 838, but I will begin to read at the very beginning, at page 833.

As I come to the count, does the Court wish me to indicate it?

The Court: Yes, I think that might be helpful.

Mr. Murray (reading): "HEARINGS REGARDING COMMUNIST INFILTRATION OF LABOR UNIONS—PART II.

"(Security Measures Relating to Officials of the UER-MWA-CIO)

"Monday, December 5, 1949

"United States House of Representatives,

"Subcommittee of the Committee on Un-American Activities, Washington, D. C.

"The subcommittee of one met, pursuant to call, at 3:30 p.m., in room 226, Old House Office Building, Hon. Morgan M. Moulder, presiding.

"Committee member present: Hon. Morgan M. Moulder.

"Staff members present: Frank S. Tavenner, Jr., counsel; John W. Carrington, clerk; Benjamin Mandel, director of research; and A. S. Poore, editor.

25 "Mr. Moulder. The committee will come to order.

"Let the record show that on November 8, 1949, the Honorable John S. Wood, chairman of the Committee on Un-American Activities, ordered, authorized, and directed Morgan M. Moulder, a member of this committee, as a subcommittee thereof, to hold, conduct, and preside over hearings scheduled for this day.

"Are you ready to proceed, Mr. Tavenner?

"Mr. Tavenner. Yes. I call as the first witness Mr. Julius Emspak.

"Mr. Moulder. You solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

"Mr. Emspak. I do.

"TESTIMONY OF JULIUS EMSPAK, ACCOMPANIED BY HIS COUNSEL, DAVID SCRIBNER.

"Mr. Tavenner: What is your full name, please?

"Mr. Emspak: Julius Emspak.

"Mr. Tavenner. Are you represented here by counsel?

"Mr. Emspak: Represented? No. He is with me. He is not representing me.

"Mr. Tavenner. Are you accompanied by counsel?

"Mr. Emspak. Yes.

"Mr. Tavenner. Will counsel identify himself for the record?

26 "Mr. Scribner. David Scribner.

"Mr. Tavenner. When and where were you born, Mr. Emspak?

"Mr. Emspak. August 6, 1904, Schenectady, New York.

"Mr. Tavenner. What is your present address?

"Mr. Emspak. 49 Cliff Side Drive, Tuckahoe 7, New York.

"Mr. Tavenner. What is your present occupation?

"Mr. Emspak. General secretary, United Electrical, Radio, and Machine Workers of America.

"Mr. Tavenner: Are you also a member of the executive committee of that organization?

"Mr. Emspak. Ex officio; yes.

"Mr. Tavenner. How long have you been an official of the UE?

"Mr. Emspak. Since its inception.

"Mr. Tavenner. And that is how long ago?

"Mr. Emspak. Since April 1, 1936, or 1 or 2 days either way.

"Mr. Tavenner. What have been the official positions held by you since that time in UE?

"Mr. Emspak. Just that.

"Mr. Tavenner. Will you state for the committee, please, in a general way, what your previous employment
27 has been?

"Mr. Emspak. Well, Mr. Chairman, I began work in the General Electric plant in Schenectady when I was old enough to get working papers, 14 years old, in January 1919, and served my apprenticeship there, working as a tool designer and so on.

"Mr. Tavenner. I would like to ask you a few questions about the organization of the UE. How many districts are there in the United Electrical, Radio, and Machine Workers of America organization?

"Mr. Moulder. How many what?

"Mr. Tavenner. Districts.

"Mr. Emspak. The constitution prescribes 12.

"Mr. Tavenner. Are there 12 districts.

"Mr. Emspak. Not functioning; no.

"Mr. Tavenner. A district normally comprises what territory?

"Mr. Emspak. It is a geographical and industrial entity that we try to develop as a district. They vary in size both as to area and membership.

"Mr. Tavenner. How many locals are there in UE?

"Mr. Emspak. Perhaps 400. I can't give you the exact number. I just don't have it in my head.

"Mr. Tavenner. Aren't there considerably more than 400 locals?

28 "Mr. Emspak. No. Perhaps you are thinking of the contracts with employers.

"Mr. Tavenner. How many rank and file members are there in the UE?

"Mr. Emspak. We repreesnt in collective bargaining approximately half a million, covered by collective bargaining agreements.

"Mr. Tavenner. You have persons known as organizers, do you not?

"Mr. Emspak. Oh, of course.

"Mr. Tavenner. What are their functions?

"Mr. Emspak. To service the local unions, organize the unorganized, help the local unions negotiate agreements, and so on.

"Mr. Tavenner. Are they pretty close to the rank and file of the membership?

"Mr. Emspak: Yes. They usually live in the communities where they work.

"Mr. Tavenner. How many organizers are there at one time in your union?

"Mr. Emspak. At one time?

"Mr. Tavenner. Yes.

"Mr. Emspak. It is not a static number. I suppose 120 or 130."

Your Honor, would it be agreeable to you for me
29 not to repeat each name? They appear to be the same each time.

The Court: Yes, I think I can follow it just as well if you omit the name.

Mr. Murray (reading): "Mr. Tavenner. Are they assigned to the various districts?

"Yes, and locals.

"How are the organizers selected?

"Recommendations of people, local unions, individual members, and so on.

"The local members make recommendations?

"On occasions they do.

"Then who does the appointing?

"The general executive board.

"The executive board. How many are on the executive board?

"Twenty.

"Twenty?

"Plus three officers.

"Plus the three officers, of whom you are one?

"Yes.

"You have in your organization what are known as international representatives; have you not?

"Correct.

"Will you describe the duties of international representatives?

"They are in effect, in charge of a group of organizers in a given area or district, working in conjunction with the district officials.

"They assist in negotiating contracts?

"Yes. Their functions are essentially the same as the functions of organizers except they coordinate the activities of the staff and they are superior to the organizers, if you want to call it that.

"How many international representatives are there in UE?

"I can't give you the exact number. I suppose 15 or 20.

"How are they selected?

"Out of the staff. The organizers usually are promoted.

"And they are selected by the executive committee?

"Yes.

"You have also what is known as a business agent?

"They are employees of local unions.

"How are they selected?

"The membership of the local usually elects them.

"Is their appointment or selection ratified, or approved by the executive committee?

"No.

"How many business agents represent the union
31 at any one time?

"That I can't answer. I just don't know.

"Briefly, what are the duties of the executive committee, of which you are a member?

"Administer the affairs of the national organization.

"Determine policy of the organization?

"No; the convention determines policy.

"Does the executive committee have any function in the negotiating of contracts or wage disputes?

"No; other than whatever the framework of the collective-bargaining policy happens to be at a given time.

"In the adjustment of grievances which may occur from time to time, what part do the officials of the UE play in such adjustments?

"It depends on the nature of the grievance and what the situation may be. By and large that is a routine administrative job that the locals handle themselves. A grievance is something that develops on a job, and most of the grievances are handled within the locals. National officers as such rarely participate.

"Will you give examples of instances in which the officials or the members of the executive board have functioned in settling or adjusting grievances?

32 "Will you repeat that?

"I say, will you give me an illustration, or cite instances, of when officials or members of the executive board function in the adjustment of grievances?

"You mean a specific type of case?

"Yes, and the procedure.

"Well, I haven't been involved in one in several years, and I would have to search my memory to tell you that. I can go back in history and give you examples of them.

"Suppose you do that.

"Understand, I am playing entirely by ear on this one. I recall some years ago a grievance arising in a plant of the General Electric Co. involving two men in a mid-western plant, which could not be settled locally, and it finally landed in the national office. I went out there and talked with the local management, and met with our committee, and had a joint meeting of the committee and management, and called the vice president of the company in charge of manufacturing and had a long conversation with him on the phone, and finally worked out an approach to it and it was resolved. Other times we would have formal meetings set up and carry on regular discussions on the basis of forms that were made out, whether it is a
33 dispute on wages or lay-off or whatever it might be.

"What other types of services do officials or members of the executive committee render the rank and file in the way of adjustment of grievances?

"We provide all sorts of information. We provide the information and personnel necessary to work out a given problem. That is our main job.

"Does that require your going on the job?

"On occasion we go in the field; yes.

"Is that frequently done, or infrequently done?

"Rather frequently. After all, problems are constantly pressing. That is the chief reason for the existence of the organization.

"The union has a contract with various employers, I suppose, in which your union is recognized as the bargaining agent in any disputes that might arise between labor and management?

"Yes.

"How many contracts, roughly speaking, do you have with employers?

"Approximately 1,500.

"That covers the work being performed in approximately how many plants?

"That many plants. No; I take that back; roughly that many plants, but a few more plants than that, because some national agreements cover a number of plants.

"In negotiating those contracts, and in the settlement of disputes arising under them, do the officers and members of the executive committee visit those plants?

"No; we don't go into plants, if that is what you mean. We go to local union meetings and have district meetings and national conferences with delegates from those plants, and so on, and work out whatever has to be worked out, whether a collective-bargaining agreement or an approach to a grievance settlement.

"Are there occasions when the officers and members of the executive committee are required to exercise disciplinary action over lesser officials and rank and file members of the union?

"I don't know what you mean when you say disciplinary action. We don't operate the way some or most unions do. Essentially—not essentially, but in every instance—the membership ultimately makes the decision on any proposition. Sometimes we may find ourselves where our point of view is not carried; other times it is. That goes on every day.

"In the event there is an infraction of the rules of your union, what action is taken or may be taken by your committee?

"The membership of the local union where it occurs, or area where it occurs, makes the decision on that, with a right to appeal to the convention, which takes place every year.

"You spoke of virtually 1,500 plants which are covered by contracts with the UE. In how many of these plants do you consider there is being done classified or restricted work for the Army, Navy, or Air Corps?

"I have no way of knowing.

"You have no way of knowing in which plants restricted work is being done?

"No.

"Is it being done in a considerable number?

"I just can't answer that. I can't give you a sensible answer to that.

"Does the UE have an official publication?

"Yes.

"What is the name of it?

"UE News.

"Where is it published?

"New York.

"How is it financed?

"Dues of the membership.

"Collected through the union?

"Local unions.

"And paid by —

36 "Paid by the individual members to the local union.

"And the local union —

"Transmits a portion of that to the general office.

"And the general office pays for the financing of the paper?

"Yes.

"How is the editor of that paper selected?

"Officially I am the editor.

"You are at the present time?

"Yes.

"How long have you been editor?

"Since we set up the union.

"How were you selected?

"By the executive board. The constitution provides that one of the paid officers be designated editor.

"Is the editorial policy of the paper controlled and directed by the executive board?

"The basic editorial policy is controlled by convention decision.

"Does the executive board function also in that connection?

"The function of the executive board is to carry out the affairs of the union between conventions on the basis of the policy decisions of the convention.

"Mr. Emspak, are you acquainted with Joseph Persily."

That is Count No. 1, if the Court please.

37 "Mr. Tavenner. Mr. Emspak, are you acquainted with Joseph Persily?

"Mr. Emspak. Mr. Chairman, I would like to say something at this point.

"Mr. Moulder. You mean in response to the question?

"Mr. Emspak. I will answer the question; yes, in response to the question and as a statement of position.

"What I say revolves around two points, one organizationally and another as an individual. Organizationally, my job as an officer of this union is to represent the interest of the membership as they determine it at the annual conventions and at other means they have of getting together and expressing themselves. My job is to administer that aspect to the best of my ability, using one very simple measuring stick, and that is: Does a given policy or action contribute to the well-being of the membership, individually and collectively?

"As an individual I would like to say one thing, and that is this: The line of questioning that counsel is developing now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am —

38 "Mr. Moulder. How long will this statement take, Mr. Emspak?

"Mr. Emspak. About two or three more minutes.

"Mr. Moulder. Proceed.

"Mr. Emspak. Everything I am, I owe to the rich heritage and tradition of this country. I do not believe that a com-

mittee of this kind, especially in view of the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country, too.

"Mr. Moulder. I want to give you full opportunity to express yourself in answer to the question, but you are making an oration now.

"Mr. Emspak. It is not an oration. It happens to be a very profound personal feeling.

"Mr. Moulder. What is the question?

"Mr. Tavenner. The question is: Are you acquainted with Joseph Persily?

"Mr. Moulder. How do you spell that?

39 "Mr. Tavenner. P-e-r-s-i-l-y.

"Mr. Emspak: Because I have a stake in this country——

"Mr. Moulder. You are not answering the question. He asked you if you are acquainted with this man.

"Mr. Emspak. I will answer it.

"Mr. Moulder. Are you or not?

"Mr. Emspak. I was on the verge of answering it.

"Mr. Moulder. If you have any explanation to make you will be permitted to do so after you answer the question.

"Mr. Emspak. Because of my interest in what is going on these days, because of the activities of this committee—

"Mr. Moulder. Are you going to answer the question?

"Mr. Emspak. Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

"Mr. Moulder. Do you think it corrupts you to answer the question?

"Mr. Emspak. I certainly do.

"Mr. Moulder. Why does it corrupt you?

"Mr. Emspak. Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country.

"Mr. Moulder. You are not going to take over this committee.

"Mr. Emspak. I don't want to.

"Mr. Moulder. And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

"Mr. Tavenner. Are you acquainted with a Joseph Persily?

"Mr. Emspak: For the reasons I stated before, I answered it.

"Mr. Moulder. Then you refuse to answer the question?

"Mr. Emspak. No. I answered it.

"Mr. Tavenner. Are you or are you not acquainted with Joseph Persily?

"Mr. Emspak. I answered the question.

"Mr. Tavenner. Your replies are a refusal to comply with the request to answer it?

"(Witness confers with his counsel.)

"Mr. Moulder. The record will reveal that you have not answered the question.

"Mr. Emspak. I have answered it to the best of my ability under the circumstances.

"Mr. Moulder. Any further questions?"

The Court: About the middle of page 838, he says: "I will answer the question; yes, in response to the question and as a statement of position."

Wasn't that an answer to that question?

Mr. Murray: No, Your Honor. The question is, "Do you know Joseph Persily?" He either knows him, he doesn't, or for some reason he can't remember.

The Court: Doesn't he say "Yes" in response to the question?

Mr. Murray: The answer to the question "Do you know Joseph Persily" would be yes or no. He does not say he knows him, doesn't say he doesn't know him. Therefore, he did not answer the question.

The Court: But he says "Yes" in response to the question.

Mr. Murray: He uses that word "yes" but not in relation to whether he is acquainted with Persily, which was the question. The word "yes" appears several times in what he says, but never in reference to whether he knows Persily.

The Court: Go ahead.

Mr. Murray: Resuming at page 840, if the Court please, the next question I am to read is Count 2 of the indictment; I will go back to give it sense: (Reads, as follows:)

"Mr. Moulder. Any further questions?

"Mr. Tavenner. Yes. In what capacity is Joseph
42 Persily associated with the UE at this time?

"Mr. Emspak. It is the same question over again. I will give the same answer."

Count 3:

"Mr. Tavenner. Is he an organizer in the UE?

"Mr. Emspak. Mr. Chairman, it is the same question.

"Mr. Tavenner. You refuse to answer that?

"Mr. Emspak. I answered it."

Count 4:

"Mr. Tavenner. Are you acquainted with Albert Smith?

"Mr. Emspak. The same answer applies to that.

"Mr Tavenner. In other words, you are refusing to answer whether you are acquainted with him or not?

"Mr. Emspak. I have answered the question as I see the answer."

Count 5:

"Mr. Tavenner. Is he employed by UE?

"Mr. Emspak. Mr. Chairman, I answered the question.

"Mr. Moulder. Could you tell us who those people are, Mr. Counsel?

"Mr. Emspak. Excuse me, please.

"(Witness confers with his counsel.)

"Mr. Tavenner. Joseph Persily and Albert Smith
43 are the two persons whose names were mentioned.

"Mr. Moulder. Who is Joseph Persily?

"Mr. Tavenner. I thought he was connected with the UE, but I am unable to understand from this witness what the connection is, if any.

"Mr. Moulder. Do our records reveal who he is?

"Mr. Tavenner. I do not know whether they do or not, Mr. Chairman.

"Mr. Emspak, has Max Helford ever been connected with UE as a field organizer?

"Mr. Emspak. Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with references to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

"I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other
congressional committee. I think I have the right to
44 reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

"Mr. Moulder. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

"Mr. Emspak. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job—

"Mr. Moulder. Do you know them or not?

"Mr. Emspak. That does not concern this committee at all.

"Mr. Moulder. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

"Mr. Emspak. No. I don't think this committee has a right to pry into my associations. That is my own position.

"Mr. Tavenner. Is Max Helford at the present time a field organizer for the UE?

"Mr. Emspak. Mr. Chairman, that is repetition of basically the same question, and the same answer stands."

Count 8:

"Mr. Tavenner. Was Phil Saba originally from local 155?

"Mr. Emspak. I answered that question."

Count 9:

"Mr. Tavenner. And is he now a field organizer for the UE in district 1?

"Mr. Emspak. I answered that question and that is the only answer I will give on any of my associations, for the reasons stated."

Count 10:

"Mr. Tavenner: Is Hank Rhine presently an international representative of the UE?

"Mr. Emspak. Same answer."

Count 11:

"Mr. Tavenner. Is Jack Gorelick now affiliated with the UE?

"Mr. Emspak. Same answer."

Count 12:

"Mr. Tavenner. Is Ernest Moyer a field organizer for UE in the Eastern area?

"Mr. Emspak. Same answer."

Count 13:

"Mr. Tavenner. Do you know James Lustig?

"Mr. Emspak. Same answer."

Count 14:

46 "Mr. Tavenner. Is he an international representative of UE?

"Mr. Emspak. We can go on endlessly like this, I suppose, but the same answer holds."

Count 15:

"Mr. Tavenner. Is Morris Kersten an international representative of UE?

"Mr. Emspak. Same answer."

Count 16:

"Mr. Tavenner. Is Fred Haug an international representative of UE?

"Mr. Emspak. Same answer."

Count 17:

"Mr. Tavenner. Is Charles Newell an international representative of UE?

"Mr. Emspak. Same answer."

Count 18:

"Mr. Tavenner. Is Leo Turner a field organizer in district 6?

"Mr. Emspak. Same answer."

Count 19:

"Mr. Tavenner. Is Hugh Harley a field organizer for UE?

"Mr. Emspak. Same answer."

Count 20:

47 "Mr. Tavenner. Is Arthur Garfield an international representative of UE?

"Mr. Emspak. Same answer."

Count 21:

"Mr. Tavenner. Is Ernest DeMaio presently an international representative of UE?

"Mr. Emspak. Same answer."

Count 22:

"Mr. Tavenner. Is Henry Fiering a field organizer for the UE?

"Mr. Emspak. Same answer."

Count 23:

"Mr. Tavenner. Is Herbert Hirschberg an international representative of UE?

"Mr. Emspak. Same answer."

Count 24:

"Mr. Tavenner. Is K. M. Kirkendahl a field organizer of the UE?

"Mr. Emspak. Same answer."

Count 25:

"Mr. Tavenner. Is Robert Harrison a field organizer of the UE?

"Mr. Emspak. Same answer."

Count 26:

"Mr. Tavenner. Is William Santora a field organ-
48 izer of the UE?

"Mr. Emspak. Same answer."

Count 27:

"Mr. Tavenner. Is Marcel Scherer an international representative of the UE?

"Mr. Emspak. Same answer."

Count 28:

"Mr. Tavenner. Is Louis I. Sorti a field organizer of the UE?

"Mr. Emspak. Same answer.

"Mr. Moulder. Same answer is your refusal to answer for the reasons given?

"Mr. Emspak. I gave specific reasons why I felt I should not participate in this kind of questioning, and I stand by that."

Count 29:

"Mr. Tavenner. Is Philip V. Gelder an international representative of the UE?

"Mr. Emspak. Same answer."

Count 30:

"Mr. Tavenner. Is Perez Zagorin a field organizer of the UE?

"Mr. Emspak. Same answer."

Count 31:

"Mr. Tavenner. Is Carl Brandt connected or associated in any way as an international representative or otherwise with UE?

"Mr. Emspak. Same answer."

Count 32:

"Mr. Tavenner. Is Al Clough a field organizer?

"Mr. Emspak. Same answer.

"Mr. Tavenner Is Kermit Kirkendahl a field organizer?

"Mr. Emspak. Same answer."

Count 33:

"Mr. Tavenner. Is John Thomas a field organizer?

"Mr. Emspak. Same answer."

Count 34:

"Mr. Tavenner. Is Fred Keller a field organizer with UE?

"Mr. Emspak. Same answer."

Count 35:

"Mr. Tavenner. Is John Mitchell a field organizer?

"Mr. Emspak. Same answer."

Count 36:

"Mr. Tavenner. Is Fred Sheppart a field organizer?

"Mr. Emspak. Same answer."

Count 37:

"Mr. Tavenner. Is L. B. Slagle a field organizer with UE?

"Mr. Emspak. Same answer.

"Mr. Tavenner. Is Martin Sramek a field organizer with UE?

"Mr. Emspak. Same answer."

Count 38:

"Mr. Tavenner. Is Robert B. Logsdon an international representative of UE?

"Mr. Emspak. Same answer."

Count 39:

"Mr. Tavenner. John Bittman is a field organizer, is he not?

"Mr. Emspak. Same answer."

Count 40:

"Mr. Tavenner. Is William B. Elconon an international representative?

"Mr. Emspak. Same answer."

Count 41:

"Mr. Tavenner. Is H. M. Martinson a field organizer?

"Mr. Emspak. Same answer.

"Mr. Tavenner. Is Anthony DeMaio an international representative of your union?

"Mr. Emspak. Same answer."

Count 42:

"Mr. Tavenner. Is Irene Berman an international representative?

"Mr. Emspak. Same answer."

51 Count 43:

"Mr. Tavenner. Is Allan Bjorklund a field organizer?

"Mr. Emspak. Same answer."

Count 44:

"Mr. Tavenner. Is Thomas Foley a field organizer?

"Mr. Emspak. Same answer."

Count 45:

"Mr. Tavenner. Is Robert Kirkwood an international representative?

"Mr. Emspak. Same answer."

Count 46:

"Mr. Tavenner. Is Lee Lundgren an international representative?

"Mr. Emspak. Same answer."

Count 47:

"Mr. Tavenner. Is William Mauseth a field organizer?

"Mr. Emspak. Same answer."

Count 48:

"Mr. Tavenner. Is William Sheehan a field organizer?

"Mr. Emspak. Same answer."

Count 49:

"Mr. Tavenner. Is Phillip H. Smith an international representative with the UE?

"Mr. Emspak. Same answer."

52 Count 50:

"Mr. Tavenner. Do you know John T. Bernard?

"Mr. Emspak. Same answer."

Count 51:

"Mr. Tavenner. Is he a field organizer for the UE in the Chicago district?

"Mr. Emspak. Same answer."

Count 52:

"Mr. Tavenner. Is Peter Besch an international representative?

"Mr. Emspak. Same answer."

Count 53:

"Mr. Tavenner. Is T. Louis Majors an international representative?

"Mr. Emspak. Same answer."

Count 54:

"Mr. Tavenner. Is Robert McNaughton a field organizer?

"Mr. Emspak. Same answer."

Count 55:

"Mr. Tavenner. Is John Paradise a field organizer?

"Mr. Emspak. Same answer."

Count 56:

"Mr. Tavenner. Is Nick Tomasetti a field organizer?

"Mr. Emspak. Same answer."

53 I might say for the first time there is a break in the numerical sequence here, Your Honor. The next

question after Tomasetti is Count 59. It follows question, Count 56 on the transcript, but it is Count 59:

"Mr. Tavenner. Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?

"Mr. Emspak. I answered that, Mr. Chairman.

"Mr. Tavenner. I say, have you ever been affiliated with such an organization?

"Mr. Emspak. I answered that.

"Mr. Moulder. You mean you refuse to answer for the reasons previously stated?

"Mr. Emspak. I answered it in the terms I did when I said as far as my associations and affiliations are concerned, that is something a committee of this kind should not pry into.

"Mr. Taverner. In other words, you do not care to disclose whether you are affiliated with that organization?

"Mr. Emspak. I answered that.

"Mr. Tavenner. Mr. Emspak, were you not a signer of a statement which hailed the War Department's order for commissions for Communists?

"Mr. Emspak. Same answer.

54 "Mr. Tavenner. Mr. Emspak, do you know that the National Federation for Constitutional Liberties has been cited as a subversive organization by two Attorneys General, as well as by the Committee on Un-American Activities?

"Mr. Emspak. It may have been. I don't know.

"Mr. Tavenner. Mr. Emspak, were you a sponsor of the so-called Win the Peace Conference held in Washington, D. C., on April 5 to 7, 1946?

"Mr. Emspak. Same answer to that.

"Mr. Tavenner. You are acquainted, are you not, with the fact that the organization has been cited as Communist and subversive by the Attorney General and by this committee?

"Mr. Emspak. Not necessarily. I don't recall.

"Mr. Tavenner. You don't recall, or you weren't concerned enough—

"Mr. Emspak. I just don't recall.

"Mr. Tavenner. Mr. Emspak, have you ever been associated with the Civil Rights Congress?

"Mr. Emspak. Again, basically the whole line of questions is the same, so I will say I take the same position I expressed earlier.

"Mr. Tavenner. Are you familiar with the fact that the Civil Rights Congress has also been cited as a Communist-front organization by the Attorney General?

55 "Mr. Emspak. Same answer.

"Mr. Tavenner. Are you acquainted with Louis Budenz?

"Mr. Emspak. Same answer.

"Mr. Tavenner. Louis Budenz was former editor of the Daily Worker, was he not?

"Mr. Emspak. Same answer.

"Mr. Tavenner. You are acquainted with the fact, are you not, that on March 18, 1947, in testimony before a committee of Congress, he identified you as a member of the Communist Party?

"Mr. Emspak. Whatever Budenz does, don't ask me to underwrite. Sure, I am acquainted with him.

"Mr. Tavenner. You know that he did so identify you as a member of the Communist Party. Do you desire to deny it?

"Mr. Emspak. I have no desire to express any opinion on my associations to this committee, for the reasons I stated.

"Mr. Tavenner. So you decline to deny or affirm that you were a member of the Communist Party?

"Mr. Emspak. I answered the question."

The next question, if the Court please, is Count 57:

"Mr. Tavenner. Are you acquainted with James

56 MacLeish?

"Mr. Emspak. Same answer.

Count 58:

"Mr. Tavenner. Is he now president of District 4, United Electrical, Radio, and Machine Workers of America?

"Mr. Emspak. Same answer.

"Mr. Tavenner. Are you acquainted with Salvatore M. Vottis?

"Mr. Emspak. Same answer.

"Mr. Tavenner. That is all you care to say about that?

"Mr. Emspak. Same answer, that is all."

Count 61:

"Mr. Tavenner. On July 25, 1947, Mr. Emspak, Mr. Vottis, in sworn testimony before this committee, stated that he had attended fraction meetings of the Communist Party along with you and other members of the UE. Do you deny or affirm the statement made by Mr. Vottis?

"Mr. Emspak. I won't discuss it at all other than in the terms I have.

"Mr. Tavenner. Mr. Emspak, Mr. Vottis also testified you attended Communist Party meetings held in his home in Schenectady, N. Y. Do you deny or affirm that statement?

57 "Mr. Emspak. I neither deny nor affirm it, Mr. Chairman.

"Mr. Tavenner. You have already testified that from the inception of the organization of UE News you have been its editor. I will make several rather long statements as a basis for questions which I would like to ask you.

"Before August 1939 the Comintern and its affiliated Communist Parties attacked Hitler as a warmonger and nazism as barbarism. The American Communist Party and affiliates of the Soviet Communist Party demanded international boycotts and blockades.

"A review of UE News for the period mentioned reveals it had the same attitude as the Communist Party toward Hitlerism. For instance, the UE News, in its first issue of 1939, praised the idea of an embargo on Germany, and on January 14 UE News carried a critical story on forced

labor in Germany. On March 25 it reviewed Hitler's promises of nonaggression and deplored the rape of Czechoslovakia. But in August 1939 the Hitler-Stalin pact was signed, and Commissar Molotov on that occasion remarked that: 'Fascism, after all, is a matter of taste.'

"A week after the signing of the pact, World War II began when the Nazis invaded Poland. The American Communist Party line quickly reversed itself, along
58 with the Communist Parties of all other countries, and, until June 22, 1949."

The Court: 1941.

Mr. Murray: I am sorry. Did I read that wrong?

The Court: I think you said "1949."

Mr. Murray: I am sorry. I will begin that sentence again. (Reading:)

"The American Communist Party line quickly reversed itself, along with the Communist Parties of all other countries, and, until June 22, 1941, the Communist press was filled with attacks on American and British leaders. The war was denounced as an imperialist war and President Roosevelt became a warmonger. Aid to Britain and the other countries fighting Hitler were violently opposed, as were proposed amendments to the neutrality law which would allow England to purchase munitions.

"The UE News, like the Communist Party, reversed its sentiments concerning the Hitler government and quickly took the position that the war was a profiteers' war. The UE News said that—

" 'Labor in America, watching the sorry sight, is watchful lest our own tories involve us in the conflict.'

"On September 30, 1939, the UE News, in a full-page editorial entitled 'Let's Do Our Fighting Here' declared that—

59 " 'The war that is going on is no exception to the rule that wars are fought for money. American labor wants no part of this fishy war.'

"For the rest of the year 1939 the UE News praised the fight of the so-called isolationists in Congress, and on

November 11, 1939, attacked Congress for making the United States 'the arsenal of the world.' The administration was condemned by the UE News as 'bomb peddlers.'

"Mr. Emspak, could you explain why the UE News, of which you were editor at the time, followed the line of the Communist Party and expressed the same views as the Communist Parties of the world both before and after the signing of the Hitler-Stalin pact?

"Mr. Emspak. UE News followed the line expressed by the membership at its conventions, and the line to the best interests of the working people. I think any time we can do anything at all to fight fascism and war, we are helping the people. The fact that the line followed by UE News coincided with the Communist Party line is purely coincident. Whenever we can do anything to help the laboring people, we do it.

"Mr. Tavenner. So it was a coincidence that the policy of the UE News coincided with the Communist Party
60 line?

"Mr. Emspak. The policy of UE News is determined by the membership at the conventions.

"Mr. Tavenner. Mr. Emspak, in 1940 the Communist Party's antiwar and isolationist line was continued and intensified. President Roosevelt was vilified as a warmonger and dupe of British imperialism . Throughout the United States the Communist Party held 'peace rallies' and 'keep America out of war' meetings. There were marches on Washington and numerous petition campaigns. Lend-lease was denounced as were moves to modify the Neutrality Act. Aid to Britain of any kind was opposed. One piece of propaganda, a pamphlet entitled 'The Yanks Are Not Coming' which was written by a west coast Communist was of particular interest to the Communist Party.

"A review of the UE News for the same period reflects that, like the Communist Party, it attacked President Roosevelt as a warmonger and charged that 'the forgotten man has yielded to the man in uniform as the chief object of concern of the national administration.'

"On January 20, UE News said that 'national defense is a gag.' Also on January 20, 1940, UE officials in district 6 signed a proclamation declaring that 'The Yanks are positively not coming.'

61 "Throughout the year, in numerous stories and editorials, UE News denounced United States foreign policy and aid to the allies. On February 24, 1940, UE News devoted a full page to the Communist pamphlet The Yanks Are Not Coming, and, like the Communist Party, praised the pamphlet as a history-making publication.

On June 8, 1940, James MacLeish, president of district 4 of the UE, issued a statement which claimed that—

"'A war hysteria is being developed with terrific speed in the United States. The entire Federal administration, including the President, is giving leadership to this campaign.'

"The UE News, on July 20, 1940, attacked the Selective Service Act and on September 21, 1940, demanded its repeal.

"Mr. Emspak, can you explain how it was that the UE News during the year 1940 followed the program of the Communist Party without deviation in its attitude toward the Second World War?

"Mr. Emspak. UE News did not follow the line of the Communist Party, Mr. Chairman. UE News followed the line the membership developed for themselves in the UE.

"Mr. Tavenner. Was it the Communist membership in the UE that developed that policy which was the same as the policy of the Communist Party?

62 "Mr. Emspak. We have no political tests in our organization. A member expresses any views he wants to, and one member does not make a decision.

"Mr. Tavenner. In 1940 the Communist Party also violently opposed the President's plan to lend United States arms to England and his proposal to transfer the group of over-age destroyers to Britain in return for Atlantic bases.

"During 1940, while the Hitler-Stalin pact was still in effect, very little criticism of Hitler and nazism was contained in the Communist press. The Communist Party and the Daily Worker repeatedly attacked Sidney Hillman and his work in the Office of Production Management and the War Production Board.

"In 1940 the Communist Party was fanatically opposed to President Roosevelt and ran its own Presidential candidate, Earl Browder. On April 8 and 9, 1940, Germany invaded Norway and Denmark. The Communists defended this invasion on the ground that Norway and Denmark were provoking Hitler. On June 15, 1940, Russia invaded Latvia, Estonia, and Lithuania, and occupied these Baltic countries. The Communist Parties throughout the world hailed the invasion of the three countries by the Soviets as a great military victory for Stalin.

"On September 27, 1940, Germany, Italy, and Japan signed the Axis Pact. The Communist line was
63 that this pact was justified because of the imperialist designs of England and the United States.

"During the same period, the UE News opposed the transfer of overage destroyers to England, particularly in its issue of September 14, 1940. On December 28, 1940, it attacked the President's proposal to lend England a quantity of American arms. During 1940 the UE News reflected the Daily Worker and the Communist press, printing no more than one or two small items speaking harshly about Hitler and nazism.

"On October 19, 1940, the UE News attacked Sidney Hillman's work in the national defense agencies, despite the fact that Hillman at the time was the president of another CIO union. Throughout the year 1940 the UE News attacked the President, despite its endorsement of the previous year of the third term. During the same year, like the Daily Worker, it failed to criticize the German invasion of Norway and Denmark. Strangely, there was no comment from the UE officials or from the UE News on

the Soviet occupation of the Baltic countries. UE News and the UE officials at no time during the year 1940 criticized the formation of the Fascist Axis which was created on September 27, 1940.

"Mr. Emspak, could you explain how the UE News adhered to the same line as the Communist Party,
64 changing each time the Communist Party changed?

"Mr. Emspak. Of course, I denied that it adhered to it. I told you before, and repeat again, that whatever appears in that paper, whatever appeared then or now, appears as a result of whatever the basic policy of the union as such is. It certainly is not an organ of the Communist Party, nor are your attempts to prove it so by these long statements going to succeed, because it just isn't so.

"Mr. Tavenner. The most active Communist front during the first 7 months of 1939 was the American League for Peace and Democracy. However, when the Hitler-Stalin Pact was signed in August 1939, the American League for Peace and Democracy, of which I believe you were a member, was dissolved promptly.

"Immediately thereafter the Communists created the American Peace Mobilization, and the White House was picketed with signs declaring 'The Yanks Are Not Coming;' and the American Peace Mobilization sent numerous delegations to Washington to exert pressure on Congressmen who agreed with President Roosevelt on aid to England and the Allies.

"Mr. Emspak, officials of the UE were prominent in the American League for Peace and Democracy, and when the League was dissolved these officials
65 promptly switched to the new Communist creation called the American Peace Mobilization.

"Can you explain why the UE in this particular instance followed the same line as the Communist Party?

"Mr. Emspak. Well, Mr. Chairman, I just don't get this. I do, of course, in a very real way, but basically you

are asking the same recurring question as to whether the UE News was an organ of the Communist Party, which it isn't. It reflects the views of the UE membership, and that is that."

The Court: I think I had better give your voice a little rest. We will take a short recess.

(Thereupon, a brief recess was had.)

The Court: You may proceed.

Mr. Murray: Thank you. I was reading at the top part of page 848. I will read the last sentence I read before the recess. (Reading:)

"It reflects the views of the UE membership, and that is that."

I shall now resume the reading. (Reading:)

"Mr. Tavenner. In other words, you contend there was no influence or pressure brought to have the editorial policy of the UE News follow the Communist Party line, though it did follow it?

66 "Mr. Emspak. Not only do I contend it, I assert it didn't.

"Mr. Tavenner. In 1941 the Communist Party line regarding the Second World War was a continuation of its 1940 position. The national defense program was constantly condemned, aid to England was violently opposed, and the Communist Party and its front organizations lobbied against lend-lease, against the loan of arms to England, and every other move in and out of Congress designed to assist England and stop the Nazi world conquest.

"The UE News on January 11, 1941, attacked the President's message to Congress asking for increased defense funds and aid to the Allies. Also on January 11, the UE News, on page 4, carried an article in which you attacked Sidney Hillman for serving as a member of the National Defense Advisory Committee.

"On January 25, 1941, the UE News devoted a full page to the American Peace Mobilization, which had you as a member of its national council.

"The American Peace Mobilization, even on the very day that Hitler attacked Russia, was picketing the White House. On June 17, 1941, just 5 days before Hitler's invasion of Russia, James MacLeish, president of district No. 4 of the UE, attacked the Defense Mediation Board,
67 and on June 7, 1941, on page 3 of the UE News, district No. 6, Council of the United Electrical Workers, declared:

"'It is becoming clearer every day that the heat is on to wind up a drive to push us into war, being conducted by big business interests who stand to profit and by the administration of Franklin D. Roosevelt and the Republican and Democratic Parties.'

"Mr. Emspak, can you explain how it was that you and your organization's newspaper, the UE News, followed the Communist Party line which I have outlined in my question?

"Mr. Emspak. UE News did not follow the Communist Party line. UE News is not the organ of a foreign power. UE News is a trade-union paper governed by the policies of the membership of the union.

"Mr. Tavenner. Also prior to the date of the attack by Germany upon Russia, the Communists in the United States were in favor of strikes in defense industries. For instance, when Wyndham Mortimer, a known Communist, called a strike at the crucial North American Aviation plant at Inglewood, Calif., the Communist Party and its press gave it their full support. The President eventually ordered Government seizure of this important defense plant; and, as a result, the Communist press said
68 that this move was outright fascism and meant the end of civil liberties in this country.

"Despite the fact that Phil Murray instructed the strikers to return to work, the UE supported the North American strike. On June 14, 1941, the UE News condemned Government intervention and declared, editorially:

"'As war fever reaches a new high, more and more

openly the forces of the Government are being turned to the suppression of the people's democratic liberties for the announced purpose of 'defending democracy.'

"You, yourself, proclaimed that the Government action—'has parallel only in the blackest pages of history in this country.'

"Mr. Emspak, again I ask you how it was that you and the organ of your organization supported the Communists in the North American Aviation strike?

"Mr. Emspak. We supported the North American Aviation strike, but we didn't support the Communists. I said then, and I repeat again what I said then about the use of troops in a labor dispute. Our country was not at war. It was 2 years before our country was at war.

"Mr. Tavenner. On June 22, 1941, Hitler invaded Russia, and the Communist Party, within the space of 2 hours, completely reversed the party line. The war they
69 had been calling an 'imperialist' war became a 'people's war' and a 'great democratic crusade.' Hitler, for whom the Communists had no harsh words for the past year and a half, became a raving beast. The President, who was reviled as a warmonger on June 21, on June 22 became a great democratic leader. The Communist opposition to aid for England and the Allies was transformed into a tremendous campaign for all-out assistance to every nation lined up against Hitler. The class struggle was suspended by the Comintern, and Earl Browder publicly declared that he was willing to work with J. P. Morgan and the National Association of Manufacturers.

"Mr. Emspak, the line of the UE News and of its officials after the invasion of Russia by Hitler was changed to the same line as that of the Communist Party. For instance, Local 1224, in the first issue of UE News following the invasion of Russia, passed a resolution demanding immediate aid to the Soviet Union. District 4, in the July 5, 1941, issue of UE News, went on record demanding that 'the Soviet Union, Great Britain, and all others sincerely

fighting the Fascist Axis be accorded the fullest assistance to avail themselves of our industrial or material resources.'

"On July 10 in UE News, district No. 1 council announced that it 'supports without reservation all-out aid for
70 Britain, China, and the Soviet Union.'

"Also, the Communist Party said that nothing must interfere with war production. Strikes were outlawed, and Earl Browder said he could see no reason why the wartime amity between labor and employers could not continue.

"The UE on July 26, 1941, proposed that President Roosevelt should 'immediately call a national conference of labor, agriculture, Government, and industry.'

"Mr. Emspak, can you explain how it was that prior to the attack by Germany upon Russia the UE supported strikes in defense plants the same as the Communist Party, whereas after the attack by Hitler upon Russia the UE, the same as the Communist Party, opposed strikes in defense industries?

"Mr. Emspak. The UE didn't take any position on strikes as such until after Pearl Harbor. Then we made a commitment to our Government on strikes, and I was a party at the meeting of the industry-labor conference that worked out that agreement.

"Mr. Tavenner. After the attack by Germany upon Russia, the Communist Party uttered hardly a word of criticism of President Roosevelt, who, until June 22, was branded an enemy of the working class and a destroyer of peace.

"On October 25 the UE News printed a three-column story asking for complete repeal of the Neu-
71 trality Act which had been advocated sometime before by President Roosevelt and opposed by both the Communist Party and the UE News.

"Mr. Emspak, can you explain why this shift in the sentiment of the UE occurred regarding the repeal of the Neutrality Act?

"Mr. Emspak. Whatever the position of the union was at the time, I suppose.

"Mr. Tavenner. On October 25, 1941, the UE News devoted a whole page to a plan developed by Joseph Selly and the American Communications Association to keep spies out of the country. Can you explain why it is that when this committee is trying to keep spies out of the count.y the UE refers to its efforts as 'Red baiting'?

"Mr. Emspak. Because that is what it is. It is union-busting. It is anti-people. It is everything that is bad in this country. It is more than 'Red baiting.' It is the first step of fascism.

"Mr. Tavenner. Do you feel that we should permit spies to come in this country?

"Mr. Emspak. No; I don't, and you know I don't.

"Mr. Tavenner. In the latter part of the year 1941 the Communist Party from time to time admitted that England and her allies had actually been fighting fascism before Russia was invaded. However, prior to Russia's
72 entry into the war, England was engaged in fighting an 'imperialist' war, according to the Communist Party line. I think I have pointed out that the UE also followed this line.

"In September 1941, the UE convention went on record and said that England was worthy of securing aid from the United States, and one of the resolutions adopted at the convention stated that 'the tremendous sacrifices being made by the British, Russian, Chinese, and other peoples in this resistance to Hitlerism are sacrifices made on our behalf as well as their own, and contribute directly to the defense of our country.' This resolution asked that all possible aid be given to Great Britain, the Soviet Union, China, and other nations resisting Hitlerism.

"Mr. Emspak, can you explain why it was that the United Electrical Workers' convention adopted such a resolution as this, whereas prior to the Russian invasion by Germany the UE was opposed to aiding Britain and its allies?

"Mr. Emspak. I suppose the people changed their minds.

"Mr. Moulder. I didn't hear your answer.

"Mr. Emspak. I said I suppose the people changed
73 their minds. We had a convention. There was a big 'hash-over,' I suppose, and they came to a certain decision, and that is that.

"Mr. Moulder. Any further questions, Mr. Tavenner?

"Mr. Tavenner. I think that is about all. I would like to release the witness and call him back. I want to ask him a few questions after questioning another witness."

That concludes the interrogatories—oh, I beg your pardon—no; it doesn't. I will continue where it dropped off, Your Honor,—"after questioning another witness."

(Reading:)

"Mr. Moulder. I do want to make this statement in reply to the statements you have made about this committee, Mr. Emspak. It is the function of this committee to expose communism and un-American activities. An appearance before this committee does not deny you any constitutional rights or privileges, nor have you been accused of anything. Your action before this committee discloses a flagrant attitude toward this committee.

"You made reference to an investigation by this committee of a CIO union. I was at that hearing, and it was disclosed that candidates for delegates to your national convention were, by inferences they would not deny—and
74 one, Whisner, admitted he was a delegate to the Soviet Union and that other members of the union had been sent as delegates to Friends of the Soviet Union. Just what influence did the disclosure of those facts by this committee have on the election?

"Mr. Emspak. That hearing was held when a priest by the name of Father Rice called a member of this committee and, at the request of the priest, who was interested in a low partisan level, this committee held the hearing. Whereas the hearing was intended to have an unfavorable reaction on the election to be held, one of the people here before this committee got the second highest vote cast.

"Mr. Moulder. It was the members of the union who voted for the delegates?

"Mr. Emspak. Yes.

"Mr. Moulder. How could this committee affect the election?

"Mr. Emspak. By the smear job this committee attempted to do.

"Mr. Moulder. Do you think it was a smear to expose that candidates were delegates for the Soviet Union?

Mr. Emspak. You have Congress interfering in a local union election.

"Mr. Moulder. It was the members of the union who voted and they had a right to exercise their own judg-
75 ment.

"Mr. Emspak. They did. One of the boys here got the second to highest vote. It shows the efforts of the committee were wasted.

"Mr. Moulder. You don't want the average union member to know anything about the Communist affiliations officers of the union may have, if they do have such affiliations?

"Mr. Emspak. I don't care, and that is not the concern of the membership. The concern of the membership is who is doing a job for them.

"Mr. Moulder. Don't you believe that the rank and file of any union should have knowledge of communistic activities within the union, and should have an opportunity to be so informed, and that this committee is performing a service when it does so expose such communistic activities within a union?

"Mr. Emspak. Of course this committee is not performing any service for organized labor.

"Mr. Moulder. Do you think it is wrong for this committee to expose the fact that Communists are trying to take over organized labor? Are you in favor of Communist control of organized labor?

"Mr. Emspak. I am not, and I am not in favor of a religious group taking control.

76 "Mr. Moulder. Don't you think if the Communists gained control of organized labor, they would lose the privileges they have to bargain freely?

"Mr. Emspak. I don't know. That is a hypothetical question.

"Mr. Tavenner. Mr. Emspak, you recently signed a non-Communist affidavit which you filed with the National Labor Relations Board?

"Mr. Emspak. That is right.

"Mr. Tavenner. When was this affidavit signed?

"Mr. Emspak. The convention had a session in September and the convention made a decision that the organization comply with the Taft-Hartley requirements in order to avail itself of whatever facilities were available, and on the basis of that decision the officers signed the non-Communist affidavits. The exact date, I don't recall. We had an acknowledgment from the Board, but the affidavit speaks for itself.

"Mr. Tavenner. Since that time you have been expelled from membership on the executive board, have you not?

"Mr. Emspak. No.

"Mr. Tavenner. You have not?

"Mr. Emspak. You mean of CIO?

"Mr. Tavenner. Yes.

77 "Mr. Emspak. No; we withdrew.

"Mr. Tavenner. You withdrew?

"Mr. Emspak. Yes; the day before. The day that the original subpoena was dated, by the way, by the purest coincidence.

"Mr. Tavenner. I assure you that must have been a coincidence.

"Mr. Emspak. Yeah.

"Mr. Tavenner. At this time are you a member of the Communist Party?

"Mr. Emspak. I answered that when I said the affidavit speaks for itself.

"Mr. Tavenner. Is that all the answer you care to give?

"Mr. Emspak. I should think that is plenty.

"Mr. Tavenner. The affidavit spoke as of the date you gave it some months back, but you are not willing to speak now as to what you are?

"Mr. Emspak. I understand an affidavit to be an affidavit, a document that is binding when one undertakes to subscribe to it. I further understand what the motives of this committee are, to establish a beautiful frame to hang people who try to comply with the law. O. K. The affidavit is binding, and that is that.

78 "Mr. Tavenner. That is all you have to say?

"Mr. Emspak. I think that answers the question fully and completely."

Count 64:

"Mr. Tavenner. Were you a member of the Communist Party at any time before you signed the affidavit?

"Mr. Emspak. That I will answer the same way I did about an hour ago.

"Mr. Tavenner. Have you ever paid Communist Party dues?

"Mr. Emspak. I answered that."

Count 66:

"Mr. Tavenner. Have you ever signed an application to join the Communist Party?

"Mr. Emspak. I answered that."

Count 67:

"Mr. Tavenner. Have you ever registered as a member of the Communist Party?

"Mr. Emspak. I answered that."

Count 68:

"Mr. Tavenner. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York City?

"Mr. Emspak. I answered that.

"Mr. Moulder. You mean you refuse to answer for

79 the same reasons you gave at the beginning?

"Mr. Emspak. That is correct. I answered the best way I know how.

"Mr. Tavenner. You know that Mr. Budenz testified you did attend the trial of Earl Browder?

"Mr. Emspak. Mr. Budenz testified to a lot of things. I read about it.

"Mr. Tavenner. Is it true or not?

"Mr. Emspak. I answered that.

"Mr. Tavenner. That is all you have to say?

"Mr. Emspak. Yes.

"Mr. Tavenner. Do you recall the film produced by UE, Deadline for Action?

"Mr. Emspak. I do recall it very well.

"Mr. Tavenner. What was the result of the showing of that film?

"Mr. Emspak. Apparently a major corporation in this country, in conjunction with an agency of the Government, succeeded in framing a man named Marzani and sending him to jail because that film happened to touch a tender spot with regard to the large corporations, because it happened to be an effective film.

"Mr. Tavenner. I have attempted to trace here the line of the UE News in comparison with the Communist Party line. I want to give you an opportunity to disavow, if you so desire, any of the statements I referred to from UE News, of which you are editor.

"Mr. Emspak. Anything that is printed in printed. I am not avowing or disavowing anything. My memory is not that good that I can recall everything you read. Whatever position the UE News took reflected the views of the UE, and that is that.

"Mr. Tavenner. I would like to ask that the witness be available tomorrow morning.

"Mr. Moulder. You are excused until tomorrow morning.

"I wish to say I have no religious prejudices whatsoever. This committee was not influenced by any church to conduct any investigation into local union affairs. I am strongly in favor of organized labor, and most of the members of this committee are, and we are not doing anything to hamper organized labor. We feel it is the duty of this com-

mittee to protect labor unions against Communist infiltration, and that we will try to do.

"You are excused until 10 o'clock tomorrow morning.

"Mr. Scribner. Isn't it possible to conclude today? We have been here since 10 o'clock this morning. The fact there were other witnesses before the committee is not the fault of this witness. He was subpoenaed for 10:30 this morning, and I think we should conclude today in-
31 stead of adjourning and possibly getting ideas overnight to go into the next day.

"Mr. Tavenner. I take exception to counsel's statement that we desire to adjourn so as to get ideas to go into tomorrow. It was my plan to finish examining this witness after I examined Mr. Matles. That was the plan and is still the plan.

"Mr. Moulder. Could we go ahead and finish today?

"Mr. Tavenner. Yes. It is now 5 o'clock, but we can go ahead.

"Mr. Moulder. Very well.

"Mr. Tavenner. Mr. Matles, please."

Then Mr. Matles was sworn, and gave testimony. Subsequently, Mr. Julius Emspak was recalled, and I shall begin reading again, if the Court please, at the upper part of page 858: (Reading)

"Mr. Tavenner. Mr. Emspak, I asked you a number of questions about your duties and about the services rendered by you and other officers of the UE to the rank and file in the matter of handling grievances, and how there were occasions when you went to the local community and worked on those problems.

"Now I would like to revert again to that subject for a few minutes and ask you several other questions.

"In the event of grievances, a business agent, in
32 endeavoring to settle a dispute between labor and management, has the right, has he not, under certain circumstances, to make an inspection on the job?

"Mr. Emspak. Not necessarily.

"Mr. Tavenner. Not necessarily?

"Mr. Emspak. No.

"Mr. Tavenner. But he has that right?

"Mr. Emspak. No. It depends on the type of local collective bargaining agreement that is in existence. In some cases they do, and others they do not.

"Mr. Tavenner. In the instance of the contract with General Electric does he have that right?

"Mr. Emspak. It does not permit inspection by the business agent.

"Mr. Tavenner. It does not?

"Mr. Emspak. No.

"Mr. Tavenner. Are not officers of UE permitted to make inspections on the job?

"Mr. Emspak. No. What happens on the rare occasions it is used, a joint committee of management and local union representatives may go look at a specific job.

"Mr. Tavenner. Let me read you paragraph 4 of the contract:

"'In those cases where it is mutually agreed by
83 management and local representatives that an inspection of the job would be helpful in settling the case, a joint committee of local and management representatives shall be allowed to make an inspection of the job. Local representatives may include the business agent or his assistant or officers of the local.'

"So both the business agent and officers of the union would have the right?

"Mr. Emspak. Possibly, but it is not automatic. Every member of the local under that provision, has the right.

"Mr. Tavenner. Mr. Emspak, the union officers also have the right, do they not, if they are so minded, to precipitate a strike?

"Mr. Emspak. No.

"Mr. Tavenner. They may do it ostensibly for trade-union purposes, and it may be done actually even for a foreign power?

"Mr. Emspak. No. That is a completely misleading, and a calculatedly misleading statement. In the first place,

so far as this union is concerned, no officer has a right to call a strike at any time, nor any group of officers. This organization happens to be one where a basic decision of that kind is reserved to the members and the members alone.

84 "Mr. Tavenner. But that would depend on the influence the leadership has on the rank and file?

"Mr. Emspak. It does not depend on any individual, and it depends on what the issue is.

"Mr. Tavenner. Mr. Emspak, I will ask you this question: Have you, as an officer of UE, or have any of the other officers of UE, to your knowledge, been denied the right to participate in the negotiation of wage disputes, by security officers of the Army, Navy, or Air Corps?

"Mr. Emspak. We have never been denied that right. At least, I never have. The question has never come up.

"Mr. Tavenner. Have you ever been denied, by such security officers of the Army, Navy, or Air Corps, all access to any plants?

"Mr. Emspak. I haven't had occasion to ask, and haven't been in any.

"Mr. Tavenner. So far as you know, you neither have been cleared nor barred?

"Mr. Emspak. So far as I know I am just an ordinary guy who has had no occasion to go in a plant. I haven't been in a plant, I guess, for 10 years.

"Mr. Moulder. Did you testify to your previous employment before going in the newspaper business?

"Mr. Emspak. I am not a newspaperman. I am
85 an officer of the union, and the constitution of the union requires that one of the paid officers be designated editor in order to have it hook up to the organization.

"Mr. Moulder. Prior to your official position, where were you employed?

"Mr. Emspak. In the General Electric plant at Schenectady until the spring of 1936.

"Mr. Tavenner. Have any other officials of UE been barred by security officers, to your knowledge?

"Mr. Emspak. You mean national officers?

"Mr. Tavenner. Yes.

"Mr. Emspak. Not that I know of.

"Mr. Tavenner. That is all."

That concludes, if the Court please, the entire examination of Mr. Emspak on December 5, 1949, in which are included the 68 questions which are contained in the indictment.

The Court: Mr. Murray, I think it is time to take a little time out for food. So we will come back at one-thirty.

(Thereupon, at 12:30 o'clock, p. m., a recess was had until 1:30 o'clock, p. m.)

86 AFTER RECESS

(The trial was resumed at 1:30 o'clock p.m., pursuant to the recess.)

Thereupon,

Frank S. Tavenner, Jr.

resumed the witness stand pursuant to the recess and testified further as follows:

The Court: Mr. Murray, you may proceed.

Direct Examination (Resumed)

By Mr. Murray:

Q. Mr. Tavenner, after Mr. Emspak and Mr. Matles had finished their appearance and testimony, were other witnesses heard from the Government and Army? A. Yes. We produced a witness by the name of Mr. Smith from the Atomic Energy Commission, and an officer of the Army, whose name I don't recall offhand.

Q. Mr. Barlow, Colonel Barlow? A. Yes, sir.

Q. Now, I observe at the conclusion of Colonel Barlow's testimony, who appears to be the last witness, and this was

on the following day of December 6, 1949, you made a statement in retrospect in regard to the purposes of the inquiry, and I shall now ask you, if you will, to read out loud from page 874, the bottom part of the page, the last paragraph that has your name, beginning Mr. Tavenner, and I will ask you to read that. A. (Reading) "Mr.
87 Chairman, this concludes the testimony at this hearing. You will probably recall that various members of the committee indicated, as I suggested a moment ago, at both the open and closed session at which the Franeys were heard on June 6, 1949, that further investigation should be made of security measures in force at plants working on secret or classified Government defense projects. Further investigation has been made from time to time.

"It has been developed in this hearing that certain officers of national unions which are bargaining agents under contracts with plants where secret or classified defense work is being performed are not subjected to security regulations in all cases.

"The testimony introduced at this hearing discloses the duties and powers of certain officials of UE in negotiating contracts, in the adjustment of grievances, in the administration of the affairs of the union, and in the right in certain instances to inspect jobs, though located in classified working facilities.

"The Atomic Energy Commission has recognized the risk involved to national security in failure to subject such officials to the same security requirements as those dealing with classified material.

88 "Mr. Moulder. I understand they do have such rules and regulations.

"Mr. Tavenner. They do have cases where those security standards have not been met, as was the case with UE.

"The security section of the Army rather takes the view, if I understand the testimony correctly, that it has no authority under the law to subject the officials of such an organization to any type of security standards except in

instances where an official in performing his duty is required to know or to see classified material.

"Without some type of security standards applying to officers of the type and character of officers in a union which has a bargaining agency contract, such officers, if actually disloyal to the United States, apparently would have opportunity to seriously jeopardize the national defense.

"It is suggested, therefore, that you consider reporting this matter to the committee as a whole for its opinion as to whether additional investigation is desired, and whether it desires to make recommendations for legislative enactment."

Q. That is sufficient reading.

Mr. Tavenner, I will ask you if at this time in your present testimony you adopt that as a statement of the
89 purpose of the inquiry just concluded?

Mr. Scribner: I respectfully object to the nature of the question. It is a question whether that was the purpose of the hearing at that time.

The Court: Sustained.

By Mr. Murray:

Q. Was the purpose as stated in the portion of the record you have read, the purpose of the hearings just concluded, of December 5 and 6, 1949? A. It was.

Mr. Murray: Will Your Honor indulge me just a moment?

The Court. Yes.

Mr. Murray: I m just about ready to finish my direct examination. I want to be sure I have everything.

That concludes the direct examination, Your Honor.

The Court: You may cross examine.

Cross Examination

By Mr. Scribner:

Q. Mr. Tavenner, the hearings which are now marked Government Exhibit 2, attachment 2 of the stipulation, were

called "Hearings Regarding Communist Infiltration of Labor Unions, Part II," were they not? A. That is correct.

Q. And that was the official designation given by the committee itself to the hearings? A. When release of
90 that testimony was made.

Q. And that was a fair and accurate statement or description of the hearing, was it not? A. It was a description of the general subject.

Q. That is right. I note that that was Part II of a hearing. Was there a Part I? A. Yes, there was.

Q. And was that called "Hearings Regarding Communist Infiltration of Labor Unions, Part I, Local 601, United Electrical, Radio and Machine Workers of America," and that was the way it was designated by the committee itself, and is a fair description of the nature of the hearing? A. That was the way in which it went out as a committee release.

Q. I assume that was an accurate statement by the committee as to the nature of the hearing. That is the question. A. I suppose it would cover the subject.

Q. You were present as counsel for the committee at the hearings regarding Communist infiltration of labor unions, part 1, were you not? A. That is correct.

Q. And at the hearings you had testimony from a number of witnesses, charging certain officials and members and staff members of the United Electrical, Radio and Machine Workers of America, as Communists or affili-
91 ated with Communist activities?

Mr. Murray: Don't answer that.

If Your Honor please, I think this is the appropriate time for me to state it in the form of an objection in regard to the examination of this witness. We have offered Mr. Tavenner's testimony in support of our side of the issue of pertinency. We have limited his testimony, first, to a statement of the general purpose of the committee's inquiry, without reference to any particular individuals, that only in preliminary fashion, and secondly, his testimony in regard to the reason for calling Mr. Emspak in particular, and the examination of Mr. Emspak, in particular.

The Government has purposely limited its proof on the pertinency issue, and in particular to the subject of the Emspak hearing.

Now, counsel is about to ask preliminary questions identifying a previous report, in regard to the committee, not this subcommittee, but the full committee, or another subcommittee's previous examination on other questions, and other individuals.

I object to it, unless it is offered, unless their cross examination is directed to the credibility of the testimony of the witness. I assume it is a collateral inquiry, and although the defendant is not precluded entirely from asking questions, I object to it. I object to it insofar as it
92 purports to be cross examination within the scope of our direct examination.

I say it is beyond the scope of the direct examination, and it is admissible only as a collateral inquiry for credibility purposes.

The Court: The objection is overruled.

Mr. Scribner: May I have the last question read to the witness?

The Court: Yes.

The Reporter (Reading): "Question: And at the hearings you had testimony from a number of witnesses, charging certain officials and members and staff members of the United Electrical, Radio and Machine Workers of America, as Communists or affiliated with Communist activities?"

The Witness: My answer was yes.

By Mr. Scribner:

Q. I read you now 6 (f) of the stipulation, and I will read from that—I will first read from 6.

"The documents noted below"—

The Court (interposing): Where are you reading from?

Mr. Scribner: From the stipulation itself, at page 2, No. 6, at the bottom of the page.

"The documents noted below from which excerpts are set forth below are true and accurate documents as transcribed,

compiled, published and issued by the respective
93 committee, or subcommittee, of Congress, for public sale and distribution and the following excerpts therefrom are true and accurate excerpts from said document."

And then I go to subsection (f).

"From 'Hearings Regarding Communist Infiltration of Labor Unions, Part I, Local 601, United Electrical, Radio and Machine Workers of America, CIO, at Pittsburgh, Pennsylvania; Hearings before the Committee on Un-American Activities, House of Representatives, Eighty-first Congress, First Session, August 9, 10, and 11, 1949'."

And now I shall go to the specific excerpts from this hearing, the accuracy of which is already indicated, notwithstanding this stipulation by the Government.

By Mr. Scribner:

Q. I ask you, Mr. Tavenner, whether this is not a true statement of the purposes of the committee as it appears in the record from which I have quoted, at page 541:

"Mr. Tavenner. Mr. Chairman, the purpose of this hearing is to inquire into the question of Communist affiliation or association of certain members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense." A. That is correct.

94 Q. I call your attention to attachment 3 of the stipulation, which has already been stipulated by the Government and the defendant as an accurate transcript from the same hearing, and an accurate excerpt from the transcript of the same hearing, to which I have already referred, and I would like to read that to you.

By the way, these hearings were held, were they not, on August 9, 10 and 11? A. I recall hearings were held on this subject at that time.

Q. Now, I will read from the attachment itself.

"Mr. Tavenner. Now will you proceed with your resume as to Mr. Julius Emspak?

"Mr. Russell. In sworn testimony of Salvatore M. Vottis before this committee during the hearings regarding communism in labor unions, he made the following statement concerning Julius Emspak and James Matles:

"'Mr. Stripling. Is it your opinion that James Matles and Julius Emspak are members of the Communist Party?

"'Mr. Vottis. Yes, they both are members of the party, to my knowledge.

"'Mr. Stripling. You sat in meetings with them?

"'Mr. Vottis. I sat in meetings with them. They
95 have met in my home as members of the Communist Party.' (See Hearings Regarding Communism in Labor Unions, p. 219.)

"Report 1311 of the Special Committee on Un-American Activities, dated March 29, 1944, contains a chapter dealing with the activities of Julius Emspak, secretary-treasurer of the United Electrical, Radio, and Machine Workers of America, CIO, beginning on page 163.

"Julius Emspak has been affiliated with the National Federation for Constitutional Liberties as one of the signers of a statement sponsored by that organization which hailed the War Department order on commissions for Communists. (See Daily Worker of March 18, 1945, p. 2.)

"The congressional Committee on Un-American Activities cited the National Federation for Constitutional Liberties as being among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law' (Rept. No. 1115, September 2, 1947, p. 3).

"In a report dated March 29, 1944, page 50, of the Special Committee on Un-American Activities, it was stated that—

"'There can be no reasonable doubt about the fact
96 that the National Federation for Constitutional Liberties—regardless of its high-sounding name—is one of the viciously subversive organizations of the Communist Party.'

"Attorney General Francis Biddle cited this group as—'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program * * *. (It) was established as a result of a conference on constitutional liberties held in Washington, D. C., June 7-9, 1940 * * *. The defense of Communist leaders such as Sam Darcy and Robert Wood, party secretaries for Pennsylvania and Oklahoma, have been major efforts of the federation.' (See Congressional Record, September 24, 1942, p. 7687.)

"Attorney General Tom Clark cited this group as subversive and Communist in lists furnished the Loyalty Review Board, which were released to the press on December 4, 1947, and September 21, 1948.

"Accordingly to the Daily Worker of March 5, 1946, Emspak was one of the sponsors of the Win-the-Peace Conference which was held in Washington, D. C., April 5-7, 1946.

"Win-the-Peace Conference or National Committee to Win the Peace was cited by Attorney General Tom Clark as subversive and Communist in lists furnished the Loyalty Review Board, which were released to the press on December 4, 1947, and September 21, 1948.

97

"Julius Emspak was one of the signers of the telegram sent to President Roosevelt by the Joint Committee for Trade-Union Rights in behalf of the International Fur and Leather Workers Union, defendants. (See Daily Worker of November 11, 1940, pp. 1 and 5.)

"The Special Committee on Un-American Activities cited the Joint Committee for Trade-Union Rights as a 'Communist front which, jointly with the International Labor Defense, supported and defended Communist Party leaders of the International Fur and Leather Workers Union when they were serving prison terms.' (Report dated March 29, 1944, p. 102).

"A letterhead, dated September 3, 1938, lists Julius Emspak as one of the sponsors of the American Relief Ship for Spain.

"The American Relief Ship for Spain was cited by the Special Committee on Un-American Activities as 'one of the several Communist Party front enterprises which raised funds for loyalist Spain (or rather raised funds for the Communist end of that civil war)' (Report, March 29, 1944, p. 102).

98 "Both a letterhead of September 28, 1939, and an undated circular list Emspak as a member of the labor advisory committee of the Consumers Union, an organization which was 'founded in the winter of 1935-36 and grew directly out of a strike at Consumers Research. The Communist Party looked upon Arthur Kallet, founder of the Consumers Union, as its chief representative in the party's effort to exploit the grievances of consumers' (Report 1311 of the Special Committee on Un-American Activities).

"In testimony of Mr. Walter S. Steele before the Committee on Un-American Activities, in July 1947, page 14, we find Julius Emspak listed as one of the initiators of the National Congress on Civil Rights on April 27-28, 1946, at which the Civil Rights Congress was born. In the committee's report on the Civil Rights Congress we find the following reference to Julius Emspak:

"'Member, initiating committee of Civil Rights Congress; cited by Louis F. Budenz as "Comrade Juniper," a secret member of the Communist Party, United States of America, in 1947; sponsor of the American Peace Mobilization and its successor, the Win-the-Peace Conference.'

"Attorney General Tom Clark cited the Civil Rights Congress as subversive and Communist in lists furn-

99 ished to the Loyalty Review Board, which were released to the press on December 4, 1947, and September 21, 1948. The congressional Committee on Un-American Activities cited the Civil Rights Congress as an organization formed in April 1946 as a merger of two other Communist-front organizations—International Labor Defense and the National Federation for Constitutional Liberties—

'dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party' and 'controlled by individuals who are either members of the Communist Party or openly loyal to it.' (Report No. 115, September 2, 1947, pp. 2 and 19.)

"Mr. Emspak is referred to on pages 145, 149, 151, 152, 153, 170, 172, 176, 195, 215, 217, 219 of Hearings Regarding Communism in Labor Unions."

Does that appear in that record and is that an accurate state of what was before the committee at that time?

Mr. Murray: Don't answer that.

Your Honor, that affords opportunity and occasion for me to make a further statement, if the Court will permit.

I object to this question. The obvious purpose of this question is for the defense, through the device of cross examining a witness who is giving testimony in regard to pertinency, to bring in defense evidence in their
100 support which will become properly an issue only when the defense begins its case.

The Government has a right in offering evidence to limit its offer. It is true on cross examination the defense can attack validity of the Government evidence, but it may not enlarge the Government evidence if it is omitting use of that evidence, which according to our proof, did not enter into the question of pertinency.

If I may draw a comparison there: If the Government were attempting to sustain the validity of an arrest without a warrant based upon probable cause, and the Government felt that it could support its position without introducing a particular item of information, which it desired to keep secret, the Government could properly limit its showing on probable cause to the extent of omitting any reference to that secret information.

If that were true, the defense could not then step in and attempt to extract from the witness on cross examination some reference to that secret information and then trying

to involve the Government in the position of not having evidence available.

Now, the purpose of this question is definitely not impeaching. If the answer to this question is responsive, it will serve another purpose than to support Government evidence of relevancy and pertinency.

101 The Government has not elected to make use of that evidence. It cannot have it forced upon its hands by the device of cross examining. It may limit its evidence and run the risk of its being ruled to be insufficient.

The defense has no right, I respectfully submit, through the device of cross examination on that evidence which is not impeaching, to involve the Government case with additional evidence that it has not chosen to develop.

Now, the purpose of this question is this: To show that the committee was in possession of information, which insofar as the committee was concerned could very well lead to incriminating questions being asked of this witness. That is not in the case yet.

That is a matter of defense, and therefore I submit that the defense ought not to be permitted to employ the device here of cross examining our witness by trying to develop affirmative evidence on the direct testimony.

I object to the question.

The Court: What is the purpose of this inquiry?

Mr. Scribner: It it please Your Honor, there are two major grounds on which I base the question.

The Court: Now, let us keep in mind the question. You have read from this report and are asking this witness if that is not actually the report of the committee. That is not the best evidence. The best evidence is what you

102 read from.

Mr. Scribner: I suppose the question is now whether or not that evidence can be introduced at this time, as was raised by Mr. Murray.

The Court: You haven't offered it.

Mr. Scribner: I want to have the witness now identify it, unless that is found to be completely unnecessary.

The Court: It doesn't need to be identified. It has already been identified by your stipulation.

Mr. Scribner: Very well. I will now offer that document or the excerpt from the document as read in evidence.

The Court: Is there any objection to that?

Mr. Murray: If this is a defense exhibit in support of the defense, there is no objection.

The Court: Of course, that is introducing a part of your defense, which means that the Court will hear no matters of law until you have concluded your defense.

You understand that?

Mr. Scribner: May I be heard on that? We also have another reason for having the document before the Court in this case, and that is that the witness testified with respect to the purpose of the hearing at which Mr. Enspak testified, and the exhibit which is now being offered tends to controvert the witness with respect to that purpose.

In other words, he talks about security measures
103 relating to industrial plants.

The Court: Well, the Court has heard no objection, and you may have a copy of this report marked as a defense exhibit. It will be received.

I just wanted you to understand the position of the Court that the Court will not entertain any questions of law until you put in your whole defense and rest.

Mr. Scribner: Very well, sir.

The Court: Just let that be marked, please.

The Court does not intimate by that that it will widen the scope of the examination of this witness.

Has that been marked?

Mr. Scribner: It is in the original stipulation.

Mr. Murray: May the clerk mark it in whatever form it is?

The Court: It is not well identified because you have only subtracted a part of that report.

Mr. Murray: But the part that has been offered concludes at the bottom of page 645?

Mr. Scribner: That is right. It is identified in the stipulation itself.

The Court: Only in part. But there is nothing to indicate the part which is included, when the hearings were held, or anything about it.

Mr. Scribner: Well, I propose to just give a de-
104 scription which I am sure Mr. Murray will agree is given on the particular exhibit itself, and that is Hearings Regarding Communist Infiltration of Labor Unions, Part I, Local 601, United Electrical, Radio, and Machine Workers of America before the Committee on Un-American Activities, House of Representatives, Eighty-first Congress, First Session, August 9, 10 and 11, 1949, pages 643 to 645.

I think we have indicated the part of the exhibit so it will be identified.

Mr. Murray: May I suggest, not all the way to the bottom of 645.

Mr. Scribner: That starts at 643, where we have the line "Mr. Tavenner."

The Court: Those are the pages that you have included here?

Mr. Scribner: That is right.

The Court: That will be known as Defendant's No. 1.

(Thereupon the document was received in evidence and marked Defendant's Exhibit No. 1.)

The Court: I think we ought to have these pages marked as Defendant's Exhibit 1. Just put a mark on them. That will identify them.

By Mr. Scribner:

Q. During the course of these hearings before a sub-
committee of the Un-American Activities Committee
105 on August 9th, 10th, and 11th, was there testimony before the committee regarding Mr. Emspak's political affiliations?

Mr. Murray: I am sorry. I was inattentive. May I have that question read?

The Court: Yes, read the question.

(The last question was read.)

A. It may depend upon what is meant by political associations.

By Mr. Scribner:

Q. Very well. Perhaps I can clarify that.

Was Mr. Emspak charged by a number of witnesses before the committee at that time of being a Communist and affiliated at that time with Communist activities? A. It is my recollection—

Mr. Murray (interposing): I think that is in line with my objection. If he wishes to make this witness his witness for that purpose, as he does the exhibit, I have no objection.

The Court: The objection is sustained.

Mr. Scribner: May I have a moment to confer? If it please Your Honor, I would be ready to adopt the witness as my witness in regard to that particular question because I think it would save the Court considerable time. I would have to call the same witness again in order to go into these particular matters.

The Court: I think it would be a little more orderly for you to complete your cross examination, and then at the appropriate time you may have him back. I will ask the witness to be available.

106

By Mr. Scribner:

Q. The hearings which were held both on December 5, 1949, and on August 9, 10 and 11, 1949, were all designed, incidentally, to investigate whether there were actually Communists in the United Electrical, Radio and Machine Workers of America; is that right?

Mr. Murray: I object for the same reason.

The Court: Yes, sustained.

Mr. Scribner: If it please Your Honor, if I may be heard for a minute, we go there to the purpose of the committee

as testified to by the witness. I am trying to establish that the purpose of the hearing was other than what has been testified to or in addition to what has been testified. Moreover, we think the Government put before the Court the general issue itself and has offered evidence by this witness to the effect that there was a refusal to answer questions, and I am addressing myself to these questions in my examination of the witness as well.

The Court: The Court thinks the objection is well taken.

By Mr. Scribner:

Q. In respect to the specific persons about whom
107 you questioned Mr. Emspak during the course of the hearing on December 5, 1949, did the committee have any information respecting these particular persons in any way whatsoever? A. I am certain that is true as to some of them.

Q. Well, will you kindly tell us with respect to which particular persons about whom questions were asked you did have some information, and please take them one by one, going through the counts of the indictment?

Joseph Persily referred to in Counts 1, 2 and 3, what information, if any, did the committee have about him at the time it asked the question of Mr. Emspak?

Mr. Murray: If the Court please, in line with my objection, the question in the present form is too general, and we ought to know the part of that information that the witness is being asked to give, in regard to whether that information is about his being a Communist or anything of that sort.

The interrogation gives no basis for going into whether they had such information, and the only information relevant to the witness's testimony is whether they have information that he was connected with the particular union, that the witness Emspak was being questioned about.

Mr. Scribner: The witness already testified that part of the inquiry was with respect to Communist infiltration of

labor unions, and that is what I am directing myself
108 to in these questions. It is presumed pertinency would be directly involved.

The Court: You are asking for knowledge had by the committee.

Mr. Scribner: Yes, indeed. That is right, sir.

The Court: Well, doesn't the report of the committee reflect that better than this witness could say?

Mr. Scribner: I guess that is the point because as the record stands now, they brought out no possible pertinency whatsoever in the asking of the question, and that is an essential element of the crime itself.

I am inquiring into the aspect of it, as to what information was had by the committee at the time it asked the question. It goes directly to the question of pertinency.

The Court: The Court thinks you are asking for secondary evidence. That report certainly would show the conclusions and the information had by the committee much better than a witness could recite.

Mr. Scribner: Well, the report may or may not have specific information with respect to each one. In other words, when the witness is asked by the committee: Do you know—

The Court: I misspoke myself. It is not only the report but it is the hearing.

Mr. Scribner: I am referring to the hearing.

109 The witness is asked, for instance, is he acquainted with Joseph Persily.

Now, that question could not have any possible pertinency to the hearing or to the jurisdiction of the committee itself in conducting these hearings, unless there was some information before this committee at the time it asked the question.

Now, I am inquiring in respect to that particular issue.

The Court: Aren't the hearings in evidence?

Mr. Scribner: They are in evidence, indeed.

The Court: Well, then, all you have to do it to point it out to the Court.

Mr. Scribner: Very well. I will be glad to do that at the appropriate time.

By Mr. Scribner:

Q. Prior to the time these hearings were actually held, and I am referring to the hearing of December 5, 1949, did the committee itself issue a public statement with respect to the purpose of the hearing? A. Not to my knowledge.

Q. Now, you recall that there was in fact a statement published with respect to the purpose of the hearing at or about that time? A. My only knowledge of that is what was stated by Mr. Emspak during the period of his
110 testimony. He referred to some statement having been published.

I hadn't seen it.

Q. Do you recall whether that was in connection with possible prosecution on the Taft-Hartley non-Communist affidavit? A. No, I don't recall any reference to that.

Q. Now, was Representative Harold H. Velde, a Republican member—I am sorry, a member of the House Un-American Activities Committee at the time this hearing was in effect? A. Yes, he was.

Q. Do you know whether Mr. Velde said in respect to Mr. Emspak, on the hearings which had been conducted before the committee—

Mr. Murray (interposing): Now, I think you have gone far enough and I am interrupting the question.

You are about to ask the witness whether he knows—

The Court (interposing): Suppose you let him complete the question.

Mr. Murray: I am sorry.

By Mr. Scribner:

Q. That Mr. Emspak was a high official of the United Electrical, Radio and Machine Workers of America, and that there had been witnesses before the committee who had identified him as a Communist Party member, and that

he was in effect a member of the movement to over-
111 throw the Government by force and violence.

Do you recall a statement made by him to that effect?

Mr. Murray: I object to that.

The Court: The objection is sustained. Apparently the hearings would be the best evidence of that.

Mr. Scribner: I am not referring to the hearings themselves. I am referring to something that occurred outside of the hearing, by a member of the committee himself.

The Court: Well, then the witness may answer, if he knows.

The Witness: You would have to refresh my recollection as to the time and place. I don't know.

By Mr. Scribner:

Q. Do you recall that being said on the floor of the House at the time that the debate was on whether or not a contempt citation should issue against Mr. Emspak?

The Court: Then the Congressional Record would show that.

Mr. Scribner: That is right.

Well, I think that there is a stipulation, that I referred to, by Mr. Murray to the effect that that statement would be an accurate statement.

Mr. Murray: I don't dispute the fact that the statement was made. My objections go to the relevancy.

The Court: Yes.

112 The Witness: Possibly I misunderstood the ruling. I thought the Court sustained the objection. If it was part of the Congressional Record, I may have read it.

The Court: Well, I understood Mr. Murray to say that he relaxed his objection as to that.

Mr. Murray: Yes, I make no objection on the ground of the form in which it is. I object to its relevancy.

The Court: He may answer.

The Witness: Excuse me. I do recall Representative Velde making a rather long statement on the floor of the House, and mentioning the name of Mr. Emspak and others, and I have possibly read the Congressional Record since that statement was made, but as to what the statement was, I can't recall from memory.

By Mr. Scribner:

Q. Do you recall whether there was any reference to Mr. Emspak ever being a Communist as such? A. No, I don't recall that he called him a Communist, if that is what you mean.

Mr. Murray: In view of the stipulation, I have no objection to counsel reading it.

Mr. Scribner: Very well. I will do that and ask it be received now.

"Julius Emspak is a high official in the ranks of the United Electrical, and Radio Workers. We heard a
113 number of witnesses who testified that Julius Emspak was a Communist Party member and very close to the leadership of the Communist Party. Those witnesses were all reliable, and they spoke of Mr. Emspak in terms of great respect, but they told the truth about it. I think there is no doubt at all but what the majority of our committee and a majority of this Congress, if we could read the testimony that we have concerning the subject of this resolution, would agree that he was a member of the great movement to overthrow our country by force and violence which originates in Moscow."

I would like to offer that statement in evidence.

The Court: I understand Mr. Murray agrees that that goes in as part of your case.

Is that correct, Mr. Murray?

Mr. Murray: Well, I understood he was trying to get it in as part of cross examination. That is the way I had it. If that is part of the defense, I don't object, and I have at no time resisted it on the basis of competency.

The Court: It will be received as part of the defense.

By Mr. Scribner:

Q. Mr. Tavenner, I will read you from the stipulation, Section 6 (o) which is an excerpt from the Congressional Record of August 10, 1950, and which as indicated by
114 Mr. Murray's stipulation is a true and accurate stipulation.

The Court: Well, the Court thinks you should cross examine this witness, and when you want to put something in from the Congressional Record, you should do it directly.

Mr. Scribner: Well, I did. I have it here. I am going to quote from it. It is an excerpt which was stipulated by Mr. Murray, and I shall not go beyond the excerpt, so it will be a cleaner and shorter record.

The Court: You don't have to ask the witness about it.

Mr. Scribner: Then I would like to offer in evidence the following statement from the Congressional Record.

The Court: Is there any objection to that as part of the defense case?

Mr. Murray: No.

Mr. Scribner: Now, this is a statement by Representative —

Mr. Murray (interposing): I will have to make an objection. I think it is inappropriate at this time to make it, but I would like to make a statement so that I won't be in the position of having waived any objection. I am going to make objection to the defense showing certain circumstances from which it will be assumed it indicated that the defendant was in fear or apprehension of criminal prosecution.

I am going to object to that unless it first be shown
115 that he made the claim. In other words, I think whether he made the claim, that has to be determined first, and I am not quibbling about the order of it.

The Court: Whether he invoked his privilege?

Mr. Murray: Yes, that is right. If he didn't invoke it, then the means by which he justifies it are irrelevant. I don't want to direct it to little things, now.

The Court: This excerpt will be received as part of the defense case.

Mr. Scribner: The particular question that I am relating to is not along this line. I would like to read it from the stipulation. This is the statement of Representative Francis Case.

By Mr. Scribner:

Q. He was a member of the committee? A. He was.

Mr. Scribner (reading): "For, in the main, our questions relate to the very points on which the 11 persons were convicted under the Smith Act, to wit, activity as Communists in advocating the violent overthrow of the Government or preparation for it."

I offer that statement in evidence, going directly to the question of the purpose of the committee, in cross examination of the witness.

The Court: Mr. Murray has not objected to it.

116 Mr. Murray: I do not but reserve the motion to strike it at an appropriate time.

Mr. Scribner: In view of the ruling of the Court, I have no further questions of Mr. Tavenner.

Mr. Murray: I have no further examination, and I have no further evidence to offer, if the Court please.

The Government rests.

The Court: Shall we excuse Mr. Tavenner then?

Mr. Murray: Unless Mr. Scribner wants him again as a defense witness.

The Court: Will you want him back?

Mr. Scribner: Yes, I will want him as a defense witness.

Will Your Honor grant us a recess at this time, because I understand the Government rests, and I would like to make a motion immediately after the recess.

The Court: I indicated that I would not hear a motion.

Mr. Scribner: Very well.

The Court: Until you have put in your entire case.

Mr. Scribner: I will be glad to do that.

The Court: Do you want him now or will you use him later?

Mr. Scribner: I would like to have him on the stand now, immediately.

The Court: Now, you become a defense witness.

117 Mr. Tavenner: Yes, sir.

Thereupon,

Frank S. Tavenner, Jr.

was called as a witness by the defendant and, being previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Scribner:

Q. Mr. Tavenner, in Defendant's Exhibit No. 1, which is an excerpt from the hearing held on August 9, 10, and 11, before the committee, there is reference to Report No. 1311 of the Special Committee on Un-American Activities, is there not? A. Well, that is probably correct but I haven't seen that exhibit.

Q. By the way, I will withdraw that question.

I think the simplest way to do it is to go through the stipulation because there is no question now about the authenticity and offer each and every item in evidence. That will be the cleaner way to do it.

I would like to offer Section 6 and 6 (a) of the stipulation. I would like to read that into the record, if the Court has no objection.

The Court: You may do that but it is already in the record.

Mr. Scribner: It is a document which appears in

118 the stipulation. This quote is not in the record.

The Court: But the stipulation is in the record with respect to all matters stated therein.

Mr. Scribner: Well, it is submitted only with respect to the accuracy of the record. I don't know whether Mr. Murray has any objection to the rest of it. If he has any

objection on any other ground, I think I will submit it in evidence.

The Court: Well, isn't this the situation: that the Court can take the stipulation and regard everything stated in there as true?

Mr. Murray: As true, but the parties have reserved the right to object to its admissibility on the ground that it is irrelevant.

I will make such objection in regard to this particular item, for instance.

The Court: Now, you are looking at No. 6?

Mr. Scribner: 6 (a) on page 3. I offer that particular portion in evidence at this time.

The Court: Explain where and what that is so I will understand it.

Mr. Scribner: In the document which is already in evidence, relating to the hearings before the committee in August, 1949, there are a number of pages referring to Mr. Emspak as a Communist. Report No. 1311 of the committee itself is specifically referred to in that report. That report was before the committee at the time, that is, in August, and I am now referring back to what it was that was in the report that relates directly to Mr. Emspak.

149

Report 1311 refers to certain charges theretofore made by the same committee with respect to Mr. Emspak, and I am trying to get the record to show we have all the charges by the committee against Mr. Emspak as a Communist prior to the time that he testified, all of which is a matter of public record, and Mr. Murray agrees that is for public sale and distribution.

The Court: What is the objection, Mr. Murray?

Mr. Murray: My objection is of a very fundamental sort. I have confidence that the Government's position is sound on the point that this defendant as a witness before that committee never did claim his privilege against self-incrimination.

150 The Court: He had a reason for claiming?

Mr. Murray: For claiming; yes. That is my position.

The Court: This will be received, of course. It will be subject to the question of law as to whether or not the privilege against self-incrimination was invoked.

Mr. Murray: Exactly.

The Court: By the witness.

Mr. Murray: Your Honor may want to receive the evidence to see whether it is subject to a motion to strike or you may want to hear our objection first; whichever the Court wishes, we will abide by.

The Court: I will receive it for any value attached.

Mr. Scribner: On that basis, may the rest be offered in evidence, because, obviously, it will depend on the Court's determination as to whether or not there was reasonable apprehension.

Mr. Murray: No objection for that limited purpose.

The Court: Those are the other exhibits to the stipulation?

Mr. Scribner: That is right.

The Court: They will be received upon the same terms, with the same understanding.

Mr. Scribner: I have no further evidence and no further questions.

The Court: (Addressing the witness) Then I
151 think you are free to go.

The Witness: Thank you very much.

Mr. Scribner: The defendant rests. Does Your Honor wish to hear a motion for acquittal at this time?

The Court: I think it may well be presented on its merits now.

Mr. Scribner: I will be glad to do that. I thought maybe Your Honor wanted to recess at this particular time.

The Court: No; I will hear from Mr. Murray.

283 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1742-50

UNITED STATES OF AMERICA

vs.

JULIUS EMSPAK, *Defendant.*

Washington, D. C.,
Monday, February 26, 1951.

The above-mentioned case came on for further hearing at 10 o'clock a.m., on Monday, February 26, 1951, in the United States District Court for the District of Columbia, in the Courthouse, at Washington, D. C.

Before

Honorable F. Dickinson Letts, District Judge of the United States District Court for the District of Columbia.

Appearances:

Charles B. Murray, Esquire, Assistant United States Attorney, in behalf of the United States; and

David Scribner, Esquire, Allan R. Rosenberg, Esquire, and Arthur Kinoy, Esquire, on behalf on the defendant.

283A PROCEEDINGS

The Deputy Clerk of the Court: United States versus Julius Emspak.

Mr. Scribner: If it please Your Honor, this morning the defendant filed a formal motion of acquittal so that we have on record a formal motion.

The Court: Very well. The motion will be overruled.

(The Opinion of the Court follows on the next page of this transcript.)

284 OPINION OF THE COURT

The Court: The Court finds that the Honorable Morgan M. Moulder constituted and was a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives before which the defendant was sworn as a witness on December 5, 1949; that as such witness the defendant refused to answer many questions which were pertinent to the question then under inquiry before such subcommittee.

The defendant now seeks to justify his refusal to answer such pertinent questions on the ground that his answers would have tended to incriminate him, thus asserting the privilege against self-incrimination guaranteed by the Fifth Amendment.

It becomes the duty of this Court to say from the evidence and upon the law whether the defendant asserted his presently-claimed constitutional right against self-incrimination at the time of his refusal to answer the several questions which are specified in the various counts of the indictment.

The inquiry is a mixed question of law and fact. It is necessary to consider the setting and the circumstances under which the defendant refused to answer the questions when they were propounded to him; the background of the committee investigation as shown by the record, and the trend the investigation had taken.

It is important to understand as clearly as possible the defendant himself, his attitude, the frame of his mind
285 and his intentions as they may be inferred from what he did and said.

The defendant was an experienced and capable executive. He has been the general secretary and a member of the executive committee of UE since the inception of that organization in 1936. At the committee hearings, he had the advice and counsel of an able attorney who accompanied him. It is reasonable to conclude that the defendant fully intended his examination should proceed and terminate as it actually did.

Almost from the beginning of his examination the defendant evinced his hostility toward the committee and exhibited his prejudices against its purposes and practices. He quickly made it apparent that his concern for the union was uppermost in his mind and seized the occasion to berate the committee and predict that it would attempt to harass the union, its leadership and its members. He announced that the line of questions which he had not yet heard goes against his grain as an American.

He lost no time in disputing the powers, the right and authority of the committee to inquire into his beliefs, his associations, or, as he stated it, anything else.

The defendant was asked if he knew Joseph Persily. He refused to make answer, and after much evasion seemed to base his refusal on his interest in what is going on these days, his aversion for the activities of the committee,
286 and his concern over hysteria which he envisions as a prevailing condition of the Congressional mind. At this juncture he said, "I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the First Amendment, supplemented by the Fifth. This committee will corrupt those rights."

Upon inquiry he analyzed this by saying, "Your activities are designed to harm the working people in this country. Every action this committee has ever taken has done that."

Upon the responses which I have now quoted, and upon that alone, defense counsel base their contention that the defendant declared his constitutional privilege against self-incrimination.

I find nothing in the record which indicates that the defendant entertained the slightest fear or apprehension of federal prosecution. He expressed alarm lest the committee might find out things with reference to individuals in his organization and perhaps frame people for criminal prosecution.

He no doubt regarded himself as a representative of the union and its members. He thought he could not answer the committee's questions and maintain his present feeling on

the right of the committee to interrogate him concerning his private affairs and his associations.

The defendant was asked if he meant to say that
287 people in the union had information that would subject him to criminal prosecution. To that question, he answered "No."

The defendant was asked if it was his feeling that to reveal his knowledge of his associates would subject him to criminal prosecution. His answer was "No."

He then volunteered as follows: "I don't think this committee has a right to pry into my associations. That is my own position."

Later in the hearing the defendant, after refusing to answer many questions, expressed himself in these words, "I gave specific reasons why I felt I should not participate in this kind of questioning and I stand by that."

There followed some 30-odd questions which the defendant refused to answer. When defendant was asked, "Have you ever been affiliated with the National Federation for Constitutional Liberties?" the defendant refused to answer the question but volunteered as follows, "I answered it in the terms I did when I said: As far as my associations and affiliations are concerned, that is something that a committee of this kind should not pry into."

Near the end of the hearing, the defendant replied to a pertinent question, "I have no desire to express any opinion on my associations to this committee."

The defendant expressed his contempt for the committee when he said, "I further understand what the mo-
288 tives of this committee are, to establish a beautiful frame to hang people who try to comply with the law."

At a time in the course of the questioning when the defendant had refused to answer most of the questions recited in the indictment, Representative Moulder cautioned the defendant that his conduct disclosed a flagrant attitude toward the committee.

This Court concurs and subscribes to that view. The Congress is one of the coordinate branches of our Government, and it was the duty of the defendant to respond to the call of the Congressional Committee before which he appeared as a witness with due respect and in recognition of its dignity. As a citizen he was required by law to cooperate with truth and without evasion in preparing for needed legislation in the public interest.

He, as have all witnesses, had the right to claim his constitutional privilege against self-incrimination if he entertained reasonable apprehensions that his answers to questions asked of him would tend to subject him to federal prosecution.

The defendant failed to assert that right and revealed no such apprehension. Indeed, he disavowed any such fear. The plea of self-incrimination contemplates an honest and reasonable apprehension of prosecution and is not available simply as an avenue of escape for a witness who has
289 something to hide, or who wishes to protect others, or through pique refuses to furnish information in disregard of his duty, in defiance of a Congressional Committee, as a challenge to its powers and authority, or for distrust of its aims, its motives and its good faith.

Upon the whole case the Court finds the defendant guilty as charged. You will be committed for sentence and the case will be referred to the Probation Office for a pre-sentence report.

Mr. Scribner: Would the Court at this time entertain a motion to continue the defendant on bail pending sentence? The defendant, of course, will be available to this Court or to the Probation Officer, whoever it is, but he will appear promptly as Your Honor will indicate. The defendant is one of the leaders of a large union and will be, of course, available to the Court.

In addition to that, may I respectfully move for a new trial and arrest of judgment?

The Court: You may do that in a formal way.

Mr. Scribner: I shall do that, sir.

The Court: But the request that you first mentioned must be denied. I understand my duty requires me to commit the defendant.

Mr. Scribner: May I inquire when sentence will be
290 imposed?

The Court: It will be imposed shortly after the Probation Office concludes its work and files its report and when I have had a chance and reasonable opportunity to study the report.

Mr. Scribner: Thank you, sir.

I would like to inform the Court at this time that I intend to make appropriate application for bail pending sentence.

The Court: Yes.

Mr. Scribner: Thank you, sir.

The Court: Perhaps I did not make myself understood. What I meant was your motion for a new trial should be in written form, not necessarily your request to continue bail.

Mr. Scribner: I understand that, sir.

(Thereupon the instant hearing was concluded.)

291 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1742-50

UNITED STATES OF AMERICA

vs.

JULIUS EMSPAK, *Defendant.*

Washington, D. C.,
Thursday, March 1, 1951.

The above-entitled case came on for further hearing at 3:30 o'clock p.m., on Thursday, March 1, 1951, in the United States District Court for the District of Columbia, in the Courthouse, at Washington, D. C.

Before

Honorable F. Dickinson Letts, District Judge of the United States District Court for the District of Columbia.

Appearances:

William Hitz, Esquire, Assistant United States Attorney, in behalf of the United States; and

Allan R. Rosenberg, Esquire, on behalf of the defendant.

292 PROCEEDINGS

The Court: Will counsel come to the bench a minute, please?

(Thereupon counsel approached the bench and the following occurred:)

Mr. Hitz: May I put my appearance on the record for the Government?

The Court: Yes.

Mr. Hitz: I am appearing here for the United States Attorney's office because Mr. Murray, who tried the case, is engaged in trial before Judge Morris. So I am here at the request of Mr. Murray.

The Court: Well, we are glad to have you here.

Mr. Rosenberg: Your Honor, Mr. Murray said he didn't request to be here when I told him about this.

The Court: Well, he has a good representative here.

Now, the reason I called you to the bench is this: We have a considerable number of counts in this indictment, and the statute requires imprisonment and a fine.

Now, what I propose to do is to impose the imprisonment on each count but permit them to run concurrently, but I am a little bit confused about the fine, and I am wondering if I do not have the power of imposing one fine to apply generally on the judgment of conviction.

Do you know?

293 Mr. Hitz: I don't know.

Mr. Rosenberg: Well, Your Honor, may I point out that in Judge Kirkland's opinion on a motion to dismiss the question of whether there was a multiple series of offenses charged or one offense charged was decided, or at least he adverted to it, saying it became critical only on the

issue of sentence, where we are now. I think in his decision he said they constituted one offense only.

Now, that opinion is part of the formal file. I am not sure I have it, but, if so, I will be glad to show it to you.

The Court: Do you have the file here?

The Deputy Clerk of the Court: No; I think Your Honor had it the other day.

The Court: Yes, I had it in my chambers.

Mr. Rosenberg: It seems to me that there is one offense only. Judge Kirkland cited a number of cases which we had given, and not that I cannot tell you about them, but I would rather have you read what Judge Kirkland said, rather than what I say about it. They are to the effect that in one continuous line of inquiry, such as this, in contempt cases in which some series of questions have been asked, the Court has found instead of there being seven, eight, or ten offenses, that there was one offense only because it was a continuous inquiry.

As I say, Judge Kirkland has already laid that
294 down in his opinion.

The Deputy Clerk of the Court: This is a copy of it, Your Honor.

The Court: Do you remember just where he speaks of that?

Mr. Rosenberg: I think I can find it.

Mr. Hitz: I might say the Government took the other view at that time, and we still do. We think each count is a separate offense.

The Court: Well, now, I have no difficulty about the counts, except for the fine.

Mr. Rosenberg: Have I selected the right part of it, Your Honor?

The Court: Yes.

Do you have some comment?

Mr. Hitz: Yes. I gathered from what you said, Your Honor, that you didn't plan to impose any sentence that would be greater than what would be imposed on any one count. Therefore, rather than to take any chance on the

sentence not running concurrently in respect to a fine, which is a question, I suggest that the sentence be imposed on the entire indictment as to jail and the fine, without regard to any particular count of the indictment.

The Court: A straight sentence?

Mr. Hitz: Yes.

295 The Court: What do we call that?

Mr. Hitz: A sentence on the indictment. I think it is a sentence on the indictment, and it would be supported by any single count.

The Court: I think I will do it that way.

Mr. Rosenberg: The maximum of the fine is a thousand dollars?

The Court: Yes, a thousand dollars.

Mr. Rosenberg: And the maximum penalty is one year?

Mr. Hitz: Either one year or twelve months.

The Court: I think it is one year. Let me see what it does say.

Punishable by a fine of not more than one thousand dollars nor less than one hundred, and imprisonment in the common jail for not less than one month nor more than twelve months.

Mr. Hitz: So it should be twelve months. I mean, it should be mentioned in months rather than parts of a year.

The Court: Yes, that is right.

All right, gentlemen.

(Thereupon counsel resumed their places in the courtroom and the following occurred:)

Mr. Rosenberg: I have some motions, Your Honor, of a formal nature.

The Court: Yes.

296 Mr. Rosenberg: For an arrest of judgment and for a new trial, which I have served upon my brother, and I would like to hand these up to you.

The Court: Yes. The Court will hear you if you wish to be heard.

Mr. Rosenberg: No, Your Honor.

The Court: Very well. Then the defendant's motion for arrest of judgment and the motion for a new trial will be overruled.

Mr. Rosenberg: I understand now that you are prepared to impose sentence?

The Court: Yes.

Mr. Rosenberg: May I be heard briefly, Your Honor?

The Court: Yes. Let the defendant stand, please.

Mr. Rosenberg: You have the probation report?

The Court: Yes.

Mr. Rosenberg: I might say I have no desire to go into any great length, but I just want to say a few words about this man and to bring to Your Honor's attention facts which may or may not be in the probation report.

Julius Emspak, is the leader of a large union. He is the founder or one of the founders of that union. He has spent all his adult life representing the interests of the people who work and who are members of that union and who have similar interests in the union.

297 When it was formed in 1936, it had relatively few members, and as I recall it, less than a few thousand, and few if any contracts with any employers. Today it is a union of approximately 300,000 people, having contracts with the largest employers, and having had contracts for many years with General Electric, Westinghouse, and with Sylvania, and many large employers, and having conducted its business for the benefit of the people it represents over a long period of time.

This man has been elected its secretary-treasurer for each of the last 14 years. He has been elected treasurer by overwhelming and sometimes unanimous vote, overwhelming majorities by delegates representing hundreds of thousands of people.

Now, the crime of which he has been convicted, Your Honor, is not a crime involving moral turpitude. It is not a crime which warrants, I submit, the imposition of the serious penalty which the law permits under this statute.

I ask Your Honor to take into account the fact that this man has led up to the time of this conviction an exemplary life, and I believe the probation report shows that he is a man of substance, a man who is a person of understanding and situation.

I don't say on conviction he should be given no sentence because the law requires, as I understand Your
298 Honor just read it, some sentence, but I do say that the conviction of his man should not carry the serious sentence which the law permits because I don't think in the light of all the circumstances, and Your Honor will recall in Your Honor's opinion, that if he had chosen to say or to make his assertion in some other way, he would have been entitled to the benefit of immunity from the transaction of refusing to answer.

Therefore, I ask Your Honor to take all these factors into account in imposing sentence.

The Court: Thank you, Mr. Rosenberg.

Julius Emspak, do you have anything to say to the Court?

The Defendant: No, Your Honor.

The Court: In addition to what your counsel has said?

The Defendant: No, Your Honor.

The Court: I have had occasion to read the report of the Probation Office, and I have first-hand knowledge of the case, and it now becomes my duty to impose the penalty upon the defendant.

Mr. Emspak, it is the judgment of the Court that you be sentenced to imprisonment in a common jail for a period of six months and that you pay a fine of $500.

My judgment rests upon the indictment as a whole.

Mr. Rosenberg: Your Honor, I now move the Court to admit the defendant to bail, if the Court pleases,
299 pending appeal.

The Court: The Court thinks it necessary to deny that request.

Mr. Rosenberg: Now, Your Honor, would you consider staying the execution of the sentence pending our applica-

tion, which we will file forthwith, or as soon as we can get it out of the typewriter, to the Court of Appeals?

The Court: Well, that is hardly consistent with what I have already done in this case. So that request must be denied.

Mr. Rosenberg: Would Your Honor then be good enough to sign the following order on motion, which I herewith submit, and that is to transmit the record of this case to the Court of Appeals in connection with this defendant's appeal, which I am filing as soon as I am able to leave this courtroom?

The Court: I think it is a little premature, isn't it?

Mr. Rosenberg: I must make a preliminary record, Your Honor, and I intend to designate the record this afternoon, since Your Honor is here, and I have had a similar order signed in the Quinn case.

This is the motion. Counsel has been served.

The Court: Mr. Rosenberg, I do not see your authority under Rule 39.

Mr. Rosenberg: You mean, in the local rules, Your
300 Honor? I can't point out the exact section of the Federal rules.

The Court: You cited Rule 39.

Mr. Rosenberg: Of the Federal rules.

The Court: Yes.

Mr. Rosenberg: Well, Your Honor, that refers to the civil rules, and the civil rules then permit the transfer of original exhibits over to the Court of Appeals.

The Court: Now, you say in your motion, Rule 39 of the Federal Rules of Criminal Procedure.

Mr. Rosenberg: That is right, Your Honor, and my recollection is that rule in turn refers to the preparation of the record in connection with the Federal Rules of Civil Procedure, and when you turn to the Rules of Civil Procedure, there is a provision for the transmission of the original records and exhibits to the appellate court. I know it is the practice and it is done in many cases. I have done it in a number of cases myself.

The Court: I do not see it there. Will you look at the rules? Perhaps you can find it for me.

Mr. Rosenberg: Well, Your Honor, in 39 (b), it says: The rules and practice governing the preparation and form of the record on appeal in civil actions shall apply to the record on appeal in all criminal proceedings except as otherwise provided in these rules.

301 The Court: Well, it says preparation of the record.

Mr. Rosenberg: And form.

I am asking Your Honor to sign what I believe to be the conventional order and the conventional motion to transmit the original exhibits from this Court to the Clerk of the Court of Appeals in connection with the appeal which I have here all signed and ready to file as soon as I leave the courtroom.

The Court: Well, I think I will have to wait until you perfect your appeal.

Mr. Rosenberg: Very well, sir.

The Court: Then I will be glad to look at it again.

Do you want these filed?

Mr. Rosenberg: May I have them back? I will refile them.

(Thereupon the instant hearing was concluded.)

Excerpts from Transcript of January 19, 1951

533 Mr. Scribner: If I might be permitted to make a suggestion, my own inclination would be at this time to make as an offer of proof the information con-

534 tained in my affidavit attached to the cases of Emspak, Matles, Fitzpatrick, Panzino, Raley, Tice, and Quinn. They are identical affidavits. Now, I imagine that the other parties here might go along on that as an offer of proof for all of them.

The Court: Can you be a little more specific on that proof? I might tell you, Mr. Scribner, in the early days when I first came to the bar, there was a prohibition against the Government employees serving on either petit

or grand juries, then there was an Act of Congress which was passed later and we are in that situation as also clarified, or whatever the expression might be, by the opinions which have recently come out of the Supreme Court. I read your affidavit very carefully in those matters. As I went through, I was looking for the thing I am now asking counsel to do, if you can make me a proffer of proof to show actual bias on the part of any of these Government employees serving on the Grand Jury.

Mr. Scribner: I would start my answer by saying—

The Court: In the old days, we used to challenge the array, if that was so, then we would have an individual poll.

Mr. Scribner: As I understand the term, actual bias has been accepted by the Supreme Court in both the Dennis and Frazier cases as that stated in the Wood case, where the Court in the Wood case said very specifically that they consider actual bias to be a constructive bias and if that can be proven, they will consider that to be actual
535 bias. As a matter of fact, they used the term "actual bias" in quotes, if Your Honor will recall. In support of that, while I would like to prepare for Your Honor a detailed and considered offer of proof, I would like to tell you generally now what it is we would offer to prove:

First, that there are ten Government employees on the Grand Jury which returned the indictments in these cases.

Secondly, that there are two additional members of the Grand Jury which returned these indictments, whose husbands were Government employees at the time they were sitting on the Grand Jury.

Three, that all of these Government employees were affected by the miasma of fear, using the words of the Supreme Court in the Dennis case, and I will be a little more specific about that in a moment.

Mr. Forer: And also the wives.

Mr. Scribner: And the wives. This fear was engendered by the application of the loyalty order, the cases involved

in the loyalty order, the investigations by the Federal Bureau of Investigation in respect to Government employees, and these Government employees specifically because we will show that every single Government employee was investigated for his loyalty by the F.B.I., by the investigations of the House UnAmerican Activities Committee, and by all other similar threats of investigations or actual investigations by other agencies of Government, all of which go to the question of the fear which these Government employees sitting on this Grand Jury could be reasonably expected to have in considering a case, or a series of cases, which in one way or another affect, at least in the mind of the prosecution or as it was presented to the Grand Jury, the question of Communist activities or associations.

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The Court: Very well.

Mr. Scribner: Now, I would like to ask leave of Your Honor to submit a specific offer of proof which will put this down on paper. I can do that very shortly.

The Court: We have an official reporter and it will be a matter of argument.

Mr. Scribner: To make certain, the offer of proof is essentially what appears in my two affidavits in the cases as I have already specifically mentioned.

The Court: The Court will note the proffer.

Now, Mr. Wright.

Mr. Forer: Your Honor please—

The Court: Mr. Forer.

Mr. Forer: Is that offer accepted on behalf of all, Your Honor?

The Court: That is what I announced, with no declining of it, it will be received as an offer.

Mr. Wright: Your Honor, with the assistance of Mr. Scribner and our position having been made clear, I have pointed out the law I feel is applicable, the evidence offered at the proper time, if Your Honor will grant us a hearing consistent with our motion for a hearing on that question, I think that covers my part of the

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argument. I therefore respectfully urge that the indictment be dismissed because of the illegal constitution of the Grand Jury; secondly, or in the alternative, that a proper hearing be granted pursuant to Rule 12 that evidence may be produced in court to show actual bias did exist, therefore the indictment was illegally returned.

* * * * * * * * * *

Counsel for Government, Mr. Hitz

604 Now, there was a question actual bias was disclosed. We do not have that here and we had the Dennis case holding that implied bias cannot be found in Government employment. The argument that was made by the defense counsel this morning with reference to the make-up of the grand jury had to do with facts the Government concedes, and they are this—the only one we concede is this: that there were 20 grand jurors who voted for the indictment in all but one of these cases, of them 10 were Government employees and 10 were not. We concede that to be true and that was stated in argument by one of counsel this morning. That same counsel went on to say that in addition to the 10 Government employees who voted for the indictment, I say all 20 did, but 10 were Government employees, there were two who had wives who were Government employees.

* * * * * * * * * *

624 Filed Feb 15 1951

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 1742-50.

UNITED STATES OF AMERICA

v.

JULIUS EMSPAK.

Stipulation

It is hereby stipulated by the parties, through their respective counsel, as follows:

1. Pursuant to Public Law No. 601, Section 121, of the 79th Congress (Chapter 753—Second Session), and House Resolution 5 of the House of Representatives of the United States, 81st Congress, dated January 3, 1949, the House of Representatives did create the Committee on Un-American Activities.

2. (a) The Committee on Un-American Activities, as created and authorized by the House of Representatives through the enactment of Public Law 601, section 121, subsection Q(2), of the Seventy-Ninth Congress, and under House Resolution 5 of the Eighty-First Congress, caused to be issued a subpena to Julius Emspak, United Electrical, Radio and Machine Workers of America, 11 East Fifty-First Street, New York, N. Y. The said subpena directed Julius Emspak to be and appear before said Committee on Un-American Activities on November 29, 1949, at the hour of 10:30 a. m., then and there to testify.

(b) The said subpena was duly served on said Julius Emspak on November 6, 1949, at 11 East 51st Street, New York, N. Y.

(c) Thereafter, by telegram dated November 22, 1949, to said Julius Emspak, Chairman John S. Wood of the Committee on Un-American Activities, postponed the appearance of Julius Emspak until December 1, 1949, at 10:30 a. m. Thereafter and on November 28, 1949, by telegram to said Julius Emspak, Chairman John S. Wood of the Committee on Un-American Activities, postponed the appearance of Julius Emspak until December 5, 1949, at 10:30 a. m.

625 (d) Said Julius Emspak, the defendant herein, did appear before a Sub-committee of the said Committee on Un-American Activities on December 5, 1949 in Washington, D. C.

3. Stipulation Attachment No. 1, Report No. 2847 of the House of Representatives, 81st Congress, 2nd Session, is the report submitted by direction of the Committee on Un-

American Activities to the House of Representatives on August 10, 1950, and contains an accurate transcript of so much of the testimony given by the defendant before a Sub-committee of the said Committee on Un-American Activities as is set forth in said Report.

4. Stipulation Attachment No. 2, "Hearings Regarding Communist Infiltration of Labor Unions—Part II (Security Measures Relating to Officials of the UERMWA-CIO), Before the Committee on Un-American Activities, House of Representatives, 81st Congress, 1st Session, December 5 and 6, 1949, Published by the Government Printing Office", attached hereto and made a part hereof, constitutes an accurate transcript of all the testimony given before a Sub-committee of the Committee on Un-American Activities on December 5, 1949 in Washington, D. C.

5. The following is House Resolution No. 749 as agreed to by the House of Representatives on August 10, 1950:

Resolved. That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Julius Emspak to answer questions before the said Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said Julius Emspak may be proceeded against in the manner and form provided by law.

6. The documents noted below from which excerpts are set forth below are true and accurate documents as transcribed, compiled, published and issued by the respective Committee, or Sub-committee, of Congress, for public sale and distribution and the following excerpts therefrom are true and accurate excerpts from said documents:

626 (a) From House Report No. 1311, Report of the Special Committee on Un-American Activities on the CIO Political Action Committee, March 29, 1944, 78th Congress, 2nd Session:

(at p. 5) "In other words, the political views and philosophy of the Communist Party and of the CIO Political Action Committee coincide in every detail."

(at p. 5) "Typical of the Communist predominance in the CIO Political Action Committee was the roster of speakers at one of its meetings held in New York City, January 14-15, 1944. Among the speakers were . . . *Julius Emspak.*"

(at p. 34) "If an organization that features Donald Henderson, Michael J. Quill, Joseph Curran, Reid Robinson, Julius Emspak, Ruth Young, Ferdinand C. Smith, Grant Oakes, Lewis Merrill, and the like as its leaders, should, through the negligence of the American electorate ever achieve political power in the United States, there would be an end to the American form of government—with its three co-equal and independent branches—as we have known it from the beginning of our Republic. Such an end to our form of government is the aim of these Communist conspirators under the leadership of Sidney Hillman. These high positions in labor organizations and their pretended patriotism mask one of the most subversive movements this country has ever known."

(at p. 103) "One of the top men in the CIO Political Action Committee is Julius Emspak, secretary-treasurer of the United Electrical, Radio and Machine Workers of America (C. I. O.), and in this capacity he was present at a political action conference held at the Hotel Warwick in Philadelphia on July 18, 1943. He is now also editor of the U. E. News, official organ of the Union.

"Emspak's record as a Communist is established by his subservience to the line of the Communist Party on numerous issues, by his position of leadership in a Communist-controlled union and by the Communist character of the U. E. News, official organ of the United Electrical, Radio and Machine Workers of America, under his editorship."

(at p. 107) "Emspak is one of the outstanding leaders of the C. I. O. Political Action Committee and the host of

Communist functionaries in his union, the U. E. R. M. W. A. is energetically backing Sidney Hillman's movement to relegate the Congress of the United States to the role of a subservient tool of a minority Communist pressure group."

(b) From House Report No. 1115 of the Committee on Un-American Activities on Civil Rights Congress as a Communist Front organization, September 2, 1947, 81st Congress, 1st Session:

627 (at p. 14) "The character of the Civil Rights Congress is amply demonstrated by the Communist affiliations of its leading officers and supporters:

* * *

"Julius Emspak, member, initiating committee of Civil Rights Congress; cited by Louis F. Budenz as 'Comrade Juniper,' a secret member of the Communist Party, U. S. A. 1947; sponsor of the American Peace Mobilization and its successor, the Win-the-Peace Conference."

(c) From "Hearing Before a Special Sub-Committee of the Committee on Education and Labor, House of Representatives, 80th Congress, 2nd Session; Investigation of Communist Infiltration of UERMWA; Hearings Held at Washington, D. C. September 2, 28 and 29; Schenectady, N. Y. September 30 and October 1; New York, October 6, 1948:

(p. 1 and 2) "Mr. Kersten. The Hearing will please come to order. For the record, at this time, I wish to introduce a letter dated August 25, 1948, signed by the chairman of the whole Committee on Education and Labor, Mr. Fred Hartley, Jr., which letter, in substance, is the authority of this subcommittee to carry on with the hearings of this morning, appointing Congressman Carroll Kearns, John F. Kennedy, and myself as a subcommittee. It sets out in detail the authority and the basis for this hearing.

(The letter is as follows:)

Congress of the United States
House of Representatives,
Committee on Education and Labor,
Washington, D. C., August 25, 1948

"Hon. Charles J. Kersten,
House of Representatives, Washington, D. C.

Dear Mr. Kersten: By virtue of the authority vested in me as chairman of the Committee on Education and Labor of the House of Representatives, and pursuant to House Resolution 111 of the Eightieth Congress, first Session, I hereby appoint you as chairman of a special sub-committee of the Committee on Education and Labor. The other representatives and members of the Committee on Education and Labor whom I have appointed to serve with you are Messrs. Carroll D. Kearns and John F. Kennedy.

"You and the members of your subcommittee are hereby authorized and directed to conduct a thorough study and investigation to determine to what extent Communists have infiltrated into the United Electrical, Radio, and Machine Workers of America, CIO. You are directed to ascertain whether or not the objectives, methods and means used and proposed by Communist leaders in the United Electrical, Radio and Machine Workers of America, CIO, are in violation of any Federal statute, endanger peaceful industrial relations between employers and employees, jeopardize our free enterprise system, and threaten the security of our Government.

"You and the members of your subcommittee are
628 authorized to study and investigate any matter or subject coming within the jurisdiction of the Committee on Education and Labor under Rule XI (1) (g) of the Rules of the House of Representatives, relating to the effect of communism and the influence of Communists within the United Electrical, Radio, and Machine Workers of America, CIO.

"You are further directed to hold such public or executive sessions as you may deem advisable and you are

hereby authorized and designated by me to issue and have served such subpenas as may be necessary in this investigation.

"Upon the completion of your study and investigation, you are directed to prepare a report to the Congress with such recommendations for the regulation, control, and outlawing of communism and Communists from labor organizations and employment in industry as, in your judgment, the facts warrant.

Sincerely yours,

FRED A. HARTLEY, JR."

(d) From House Committee Report No. 15, dated December 14, 1948, "Interim Report of Sub-Committee of the House Committee on Education and Labor on the United Electrical, Radio and Machine Workers of America-CIO; Investigation of Communist Infiltration into Labor Unions which Serve the Industries of the United States:"

(at p. 8)

"Mr. Kersten. Do you believe that in that group you have considerable communistic elements?

"Mr. Carey. *I think they sacrifice the interests of the UE to promote the foreign policy of the Soviet Union; yes, sir.* (Italics in report)

"Mr. Kersten. When you say 'they,' whom do you mean?

"Mr. Carey. *Fitzgerald, Emspak, Matles, the executive board, the editor and his associates on the newspaper, the office staff, and the organizational staff.*" (Italics in report)

(at p. 17-18)

"Mr. Budenz, Conroy and Matthews testified as to Emspak's Communist connections. Mr. Budenz described in detail his (Budenz) attendance at the trial of Earl Browder at the Communist Party headquarters for a period of 3 days, during which time Emspak sat in attendance as a Communist at the trial."

(at p. 20)

"The overwhelming evidence at the hearings was that the following international officers of the UE were, at the times stated therein, either members of the Communist Party or under its control: James J. Matles, national organizer, Julius Emspak, secretary and treasurer . . . "

(e) From document prepared and released by the Committee on Un-American Activities, U. S. House of Representatives, Washington, D. C.: "100 Things You Should Know About Communism, Aug. 15, 1949:"

629 (at p. 88)

"81. Well, how do you know Communism has any power in any of these listed unions?

"Because of the men who hold positions of critical influence in them.

"Here are some examples of Communist officers:

Name	Union	Office * * *
Julius Emspak	United Electrical, Radio and Machine Workers of America, CIO"	Secretary-Treasurer

* * *

(f) From "Hearings Regarding Communist Infiltration of Labor Unions—Part I (Local 601, United Electrical, Radio and Machine Workers of America, CIO, Pittsburgh, Pa.); Hearings Before the Committee on Un-American Activities, House of Representatives, 81st Congress, 1st Session, August 9, 10, and 11, 1949:"

(at p. 541)

"Mr. Tavenner. Mr. Chairman, the purpose of this hearing is to inquire into the question of communist affiliation or association of certain members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense."

(at pp. 643-645): See Stipulation Attachment No. 3.
(at pp. 651-681): See Stipulation Attachment No. 4.

(g) Stipulation Attachment No. 5: The statements contained in Stipulation Attachment No. 5 constitute a true and accurate copy of reference exhibit, "Officials of the UERMWA With Communist or Communist Front Affiliations" (from "Owen Albert" to "Frank Ross"), submitted to House Committee on Education and Labor by J. B. Matthews during the course of hearings on September 29, 1948.

(h) The following named persons were listed in House Report No. 1311 of the Special Committee on Un-American Activities on the CIO Political Action Committee, March 29, 1944, as Communists or as affiliated with Communists or Communist Front Organizations; the persons listed are the same persons whose names are referred to in the respective counts of indictment herein:

Bernard, John T.—pp. 50, 53, 61, 80 (Count Nos. 50, 51)
Bjorkland, Allen—p. 62 (Count No. 43)
630 DeMaio, Ernest—pp. 62, 104 (Count No. 21)
Elconin, Wm. B.—p. 57 (Count No. 40)
Fiering, Henry—p. 104 (Count No. 22)
Foley, Thomas—pp. 50, 62 (Count No. 44)
Keller, Fred—pp. 40, 104 (Count No. 34)
Kirkendahl, K. M.—p. 104 (Count No. 24)
Logsdon, Robt. B.—p. 104 (Count No. 38)
Lustig, James—pp. 63, 104, 183 (Count Nos. 13, 14)
Majors, Louis T.—p. 51 (Count No. 53)
MacLeish, James—pp. 104, 64 (Count Nos. 57, 58)
MacNaughton, Robt.—p. 57 (Count No. 54)
Mauseth, Wm.—pp. 57, 64, 104 (Count No. 47)
Persily, Joseph—p. 137 (Count Nos. 1, 2, 3)
Sherer, Marcel—pp. 85f, 132 (Count No. 27)
Turner, Leo—pp. 58, 68 (Count No. 18)
Van Gelder, Ph.—p. 52 (Count No. 29)
Zagorin, Perez—p. 65 (Count No. 30)

(i) The following named persons were listed in House Report No. 1115 of the Committee on Un-American Activi-

ties on Civil Rights Congress as a Communist Front organization, Sept. 2, 1947, as Communists or affiliated with Communists or Communist Front Organizations; the persons listed are the same persons whose names are referred to in the respective counts of indictment herein:

Bittman, John—p. 31 (Count No. 39)
DeMaio, Ernest—p. 31 (Count No. 21)
Fiering, Henry—p. 32 (Count No. 22)
Garfield, Arthur—p. 32 (Count No. 20)
Harrison, Robt.—p. 32 (Count No. 25)
Haug, Fred—p. 32 (Count No. 16)
Hirschberg, Herbert—p. 32 (Count No. 23)
Keller, Fred—p. 32 (Count No. 34)
Kirkendahl, K. M.—p. 32 (Count No. 24)
Kirkwood, Robt.—p. 31 (Count No. 45)
Martinson, H. M.—p. 31 (Count No. 41)
MacLeish, James—p. 31 (Count Nos. 57, 58)
Mauseth, Wm.—p. 31 (Count No. 47)
Mitchell, John—p. 32 (Count No. 35)
Moyer, Ernest—p. 39 (Count No. 12)
Paradise, John—p. 32 (Count No. 55)
Santora, Wm.—p. 32 (Count No. 26)
Sheppart, Fred—p. 32 (Paul) (Count No. 36)
Slagle, L. S.—p. 32 (Count No. 37)
Smith, Philip—p. 32 (Count No. 49)
Sarti, Louis J.—p. 32 (Count No. 28)
Van Gelder, Ph.—p. 32 (Count No. 29)

(j) The following named persons were listed in Stipulation Attachment No. 5 as "officials of the UERMWA with Communist or Communist Front Affiliations;" the persons listed are the same persons whose names are referred to in the respective counts of indictment herein:

Berman, Irene—p. 3 (Count No. 42)
Besch, Peter—p. 3 (Count No. 52)
Bittman, John—p. 3 (Count No. 39)
Bjorkland, Allan—p. 3 (Count No. 43)
Brandt, Carl—p. 3 (Count No. 31)

Clough, Al—p. 4 (Count No. 32)
Garfield, Arthur—p. 7 (Count No. 20)
631 Harley, Hugh—p. 9 (Count No. 19)
Harrison, Robt.—p. 9 (Count No. 25)
Hirschberg, Herbert—p. 9 (Count No. 23)
Kirkendahl, K. M.—p. 10 (Count No. 24)
Majors, Louis T.—p. 12 (Count No. 53)
Martinson, H. M.—p. 12 (Count No. 41)
MacNaughton, Robt.—p. 12 (Count No. 54)
Mitchell, John—p. 13 (Count No. 35)
Newell, Chas.—p. 13 (Count No. 17)
Paradise, John—p. 14 (Count No. 55)
Persily, Joseph—p. 14 (Count Nos. 1, 2, 3)

(k) The following named persons were listed in Stipulation Attachment No. 4 as Communists or as affiliated with Communists or Communist Front Organizations; the persons listed are the same persons whose names are referred to in the respective counts of indictment herein:

Bernard, John T.—p. 654 (Count Nos. 50, 51)
DeMaio, Ernest—p. 657 (Count No. 21)
Elconin, Wm. B.—p. 658 (Count No. 40)
Fiering, Henry—p. 659 (Count No. 22)
Foley, Thos.——p. 660 (Count No. 44)
Goreli[illegible]ack—p. 661 (Count No. 11)
Haug, Fred—p. 662 (Count No. 16)
Keller, Fred—p. 663 (Count No. 34)
Kerstein, Morris—p. 664 (Count No. 15)
Kirkwood, Robt.—p. 664 (Count No. 45)
Lundgren, Lee—p. 666 (Count No. 46)
Lustig, James—p. 666 (Count Nos. 13, 14)
MacLeish, James—p. 670 (Count Nos. 57, 58)
Mauseth, Wm.—p. 669 (Count No. 47)
Rhine, Hank—p. 674 (Count No. 10)
Sherer, Marcel—p. 675 (Count No. 27)
Smith, Albert—p. 677 (Count Nos. 4, 5)
Van Gelder, Ph.—p. 678 (Count No. 29)
Zagorin, Perez—p. 680 (Count No. 30)

(l) From Report of the Committee on Un-American Activities to the U. S. House of Representatives, 80th Congress, 2nd Session, Dec. 31, 1948:

(at p. 2) "Early in 1947, the Committee adopted the following 8 point program which outlined the scope of its activities. This program furnishes an appropriate standard by which the work of the Committee should be judged.

. . .

"To spotlight the spectacle of having outright Communists controlling and dominating some of the most vital unions in American labor."

(at p. 22) "Indexes to public hearings and committee publications contain references to individuals contain 48,221 references to individuals and 8,593 references to organizations. These indexes and the committee's card files are consulted daily by authorized personnel from numerous Government agencies in connection with loyalty or security investigations. During the period January 22, 1947, to December 21, 1948, accredited representatives of 632 Government agencies made 5,975 visits to the Committee file room to secure information. The length of such visits varied from 20 to 30 minutes to an entire day, during which time files were checked for available information concerning 3 to 200 or more individuals.

"Visitors during this period were representatives of the following agencies: Federal Bureau of Investigation, Civil Service Commission, State Department, Treasury Department, United States Coast Guard, United States Secret Service, War Department, United States Air Force, Central Intelligence Agency, Navy Department, Labor Department, Federal Communications Commission, Securities and Exchange Commission, Commerce Department, Agriculture Department, Economic Cooperation, National Labor Relations Board, Federal Power Commission, Civil Aeronautics Board, War Assets Administration and Metropolitan Police Department."

(m) From "Citations by Government Agencies of Organizations and Publications Found to be Communist or

Communist Fronts", Dec. 18, 1948, prepared and released by the Committee on Un-American Activities, U. S. House of Representatives, Washington, D. C. (See Count 59 of Indictment):

(at pp. 71-72) "NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES

"1. Cited as subversive and Communist. (Attorney General Tom Clark, letters to Loyalty Review Board, released December 4, 1947, and September 21, 1948.)

"2. 'Part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program. * * * [It] was established as a result of a conference on constitutional liberties held in Washington, D. C., June 7-9, 1940. * * * The defense of Communist leaders such as Sam Darcy and Robert Wood, party secretaries for Pennsylvania and Oklahoma, have been major efforts of the federation.' (Attorney General Francis Biddle, Congressional Record, September 24, 1942, p. 7687.)

"3. 'There can be no reasonable doubt about the fact that the National Federation for Constitutional Liberties—regardless of its high-sounding name—is one of the viciously subversive organizations of the Communist Party.' (Special Committee on Un-American Activities, Report, March 29, 1944, p. 50; also cited in Reports, June 25, 1942, p. 20; and January 2, 1943, pp. 9 and 12.)

"4. Among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.' (Congressional Committee on Un-American Activities, Report No. 1115, Sept. 2, 1947, p. 3.)

633 "5. 'One of the most important Communist-front organizations in the United States. While following the Communist Party line meticulously the organization has been helpful to Communists who wish to evade and defy

Government agencies investigation subversive activities.' It 'recently' combined with International Labor Defense and the Metropolitan Interfaith and Interracial Coordinating Council of New York to form the Civil Rights Congress. (California Committee on Un-American Activities, Report, 1948, pp. 201 and 327.)

(n) From "Citations by Government Agencies of Organizations and Publications Found to be Communist or Communist Fronts, Dec. 18, 1948, prepared and released by the Committee on Un-American Activities, U. S. House of Representatives, Washington, D. C. (See Count 60 of Indictment):

(at p. 26)

"CIVIL RIGHTS CONGRESS

"1. Cited as subversive and Communist. (Attorney General Tom Clark, letters to Loyalty Review Board, released December 4, 1947, and September 21, 1948.)

"2. Cited as an organization formed in April 1946 as a merger of two other Communist-front organizations (International Labor Defense and the National Federation for Constitutional Liberties); 'dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party' and 'controlled by individuals who are either members of the Communist Party or openly loyal to it.' (Congressional Committee on Un-American Activities, Report No. 1115, Sept. 2, 1947, pp. 2 and 19.)

"3. A 'Communist-dominated organization of comparatively recent origin.' (California Committee on Un-American Activities, Report, 1947, p. 187.)"

(o) From Congressional Record, Vol. 96, No. 158, August 10, 1950, at p. 12447, by Rep. Francis Case:

"The gentleman from New York [Mr. Marcantonio] said that Congress cannot investigate where it cannot legislate, but the court of appeals in upholding the convictions under the Smith Act certainly found that there the Congress

could legislate. If it could legislate there, certainly we have the right to try to determine whether clear and present danger exists in our inquiries of these witnesses. For in the main, our questions relate to the very points on which the 11 persons were convicted under the Smith Act, to wit, activity as Communists in advocating the violent overthrow of the Government or preparation for it.

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"If the questions that were asked in this instant case, this Emspak case, can be refused on the grounds which Emspak offered, then the committee cannot carry out the functions assigned to it by the Congress."

(p) From Congressional Record, Vol. 96, No. 158, August 10, 1950, at p. 12444, by Rep. Harold H. Velde:

"Mr. Speaker, I have a great deal of respect for the legal ability of the gentleman from New York [Mr. Marcantonio], but I cannot agree with him that the Estes case which he discussed is in point at all. In the first place, as the gentleman from Pennsylvania mentioned, that case was before a deportation court. This case involves a congressional committee hearing. I doubt very much whether a congressional committee or the entire Congress has a right to incriminate anyone. Anything that can be said before a committee cannot be used against the witness later in any kind of proceeding except in perjury cases.

"So I can see no similarity at all between the cases of Estes and Julius Emspak. Julius Emspak is a high official in the ranks of the United Electrical and Radio Workers. We heard a number of witnesses who testified that Julius Emspak was a Communist Party member and very close to the leadership of the Communist Party. Those witnesses were all reliable, and they spoke of Mr. Emspak in terms of great respect, but they told the truth about it. I think there is no doubt at all but what the majority of our committee and a majority of this Congress, if we could read the testimony that we have concerning the subject of this resolution, would agree that he was a member of the great

movement to overthrow our country by force and violence which originates in Moscow." * * *

(q) From "Hearings Before Un-American Activities Committee, 81st Congress, 1st Session, Regarding Communist Infiltration of Radiation Laboratories, etc., Vol. 1, April 22, 26, May 25, June 1 and 14, 1949; statement of Chairman Wood:

(at p. 297)

"On the question of your right to refuse to answer, if you feel that an answer to that question would subject you to some criminal prosecution, that you would endanger your own safety and personal liberty by an answer to that question, you have a right to refuse because the Constitution protects people from giving testimony that would tend to incriminate them and you would have a right to refuse to answer for that reason."

7. The following statutes were in force and effect on and prior to December 5, 1949:

Smith Act 18 USC 2385

False Claims Act 18 USC 1001 (formerly Sec. 35(a) of the Criminal Code)

Federal Conspiracy Act 18 USC 371

635 Taft-Hartley Law 29 USC 159(h)

(Labor-Management Relations Act, 1947, Sec. 9(h)

8. Prior to December 5, 1949, Communists were indicted for violation of the Smith Act and conspiracy to violate the Smith Act and were convicted of conspiracy to violate the Smith Act, which said actions were widely reported to the public at large through the press, radio and in other ways. Stipulation Attachment No. 6 is a true and accurate copy of pages 35, 73, 35-75 from the transcript of the trial in the case of U. S. v. Dennis (indictment for conspiracy to violate the Smith Act) on March 25, 1949.

9. (a) Stipulation Attachment No. 7 is a true and accurate copy of Form NLRB 1081, Affidavit of Non-Communist Union Officer, affidavit published and issued by the National Labor Relations Board.

(b) On October 14, 1949, Julius Emspak, the defendant herein, filed forms NLRB 1081 and same was filed with the National Labor Relations Board at or about the date of signing.

(c) After the filing of said non-Communist affidavits by Julius Emspak with the National Labor Relations Board and prior to Dec. 5, 1949, Robert Denham, then General Counsel of the National Labor Relations Board, or his agents or representatives, referred said affidavits to the U. S. Department of Justice for investigation as to whether there was a violation of the Federal laws.

10. Stipulation Attachment No. 8 is a true and accurate copy of a news item appearing in the New York Times, November 23, 1949, under the byline of Louis Stark with the headline: "Justice Action Due on Non-Red Oaths; Grand Jury May Get Cases—U. S. Reported Not Waiting for High-Court Ruling."

11. Stipulation Attachment No. 9 is a true and accurate copy of a news item appearing in the New York Times, November 17, 1949 headlined "House Group Calls Two UE Leaders."

636 12. The defendant, Julius Emspak, is the same person as the Julius Emspak referred to in the documents and information described in this Stipulation and Stipulation Attachments.

13. That the contents of the documents or the information referred to in paragraphs 6(c), 6(d), 6(j) and 8 were in the possession of or were known to the House Committee on Un-American Activities or its representatives on and before December 5, 1949.

14. That at the time the defendant testified before the subcommittee of the Committee on Un-American Activities of the House of Representatives the following members of the House constituted the full Committee on Un-American Activities: John S. Wood, Chairman, of Georgia, Francis E. Walter, of Pennsylvania, P[illegible] P. Harrison, of

Virginia, John McSweeney, of Ohio, Morgan M. Moulder, of Missouri, Richard M. Nixon, of California, Francis Case, of South Dakota, Harold H. Velde, of Illinois, and Bernard W. (Pat) Kearney, of New York.

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CHARLES B. MURRAY
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ALLAN R. ROSENBERG
Attorneys for Defendant

February 15, 1951

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638 **Stipulation Attachment No. 1**

HOUSE OF REPRESENTATIVES

81st Congress 2d Session Report No. 2847

PROCEEDINGS AGAINST JULIUS EMSPAK

August 10, 1950—Ordered to be printed

Mr. Wood, of Georgia, from the Committee on Un-American Activities, submitted the following

REPORT

CITING JULIUS EMSPAK

The Committee on Un-American Activities, as created and authorized by the House of Representatives through the enactment of Pubic Law 601, section 121 subsection Q (2), of the Seventy-ninth Congress, and under House Resolution 5 of the Eighty-first Congress, caused to be issued a subpena to Julius Emspak, United Electrical, Radio, and Machine Workers of America, 11 East Fifty-first Street, New York, N. Y. The said subpena directed

Julius Emspak to be and appear before said Committee on Un-American Activities on November 29, 1949, at the hour of 10:30 a. m., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee. The subpena served upon said Julius Emspak is set forth in words and figures, as follows:

By authority of the House of Representatives of the Congress of the United States of America, to Alvin W. Stokes. You are hereby commanded to summon Mr. Julius Emspak, to be and appear before the Subcommittee on Un-American Activities of the House of Representatives of the United States, of which the Honorable John S. Wood is chairman, in their chamber in the city of Washington, room 226, Old House Office Building, on Tuesday, November 29, 1949, at the hour of 10:30 a. m. then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee. Herein fail not, and make return of this summons. Witness my hand and the seal of the House of Representatives of the United States at the city of Washington, this 1st day of November 1949.

JOHN S. WOOD, *Chairman.*

Attest:

[SEAL] RALPH R. ROBERTS,
Clerk, United States House of Representatives.

639 The said subpena was duly served as appears by the return made thereon by Alvin W. Stokes, who was duly authorized to serve the said subpena. The return of the service by the said Alvin W. Stokes, being endorsed thereon, is set forth in words and figures, as follows:

Served November 16, 1949, 5:10 p. m., to UE offices 11 East Fifty-first Street, New York City.

ALVIN W. STOKES.

On November 22, 1949, a telegram was sent to Mr. Julius Emspak which is set forth in words and figures, as follows:

WASHINGTON, D. C., *November 22, 1949.*

MR. JULIUS EMSPAK,
United Electrical, Radio, and
Machine Workers of America,
11 East Fifty-first Street, New York, N. Y.:

Your appearance before the Committee on Un-American Activities is postponed until December 1, 1949, at 10:30 a. m. Subpena served upon you on November 16 continues in force and effect.

JOHN S. WOOD, *Chairman.*

On November 28, the following telegram was sent to Mr. Julius Emspak, which is set forth herein in words and figures, as follows:

WASHINGTON, D. C., *Novemeber 28, 1949.*

MR JULIUS EMSPAK,
United Electrical, Radio, and
Machine Workers of America,
11 East Fifty-first Street, New York, N. Y.:

Your appearance before the Committee on Un-American Activities is postponed until December 5, 1949, at 10:30 a. m. Subpena served upon you on Novemebr 16, continues in force and effect.

JOHN S. WOOD, *Chairman.*

The said Julius Emspak, pursuant to said subpena and in compliance therewith, appeared before the said committee to give such testimony as required under and by virtue of Public Law 601, section 121, subsection Q (2), of the Seventy-ninth Congress, and under House Resolution 5 of the Eighty-first Congress. The said Julius Emspak having appeared as a witness and having been asked questions, namely:

Mr. Emspak, are you acquainted with Joseph Persily?

In what capacity is Joseph Persily associated with the UE at this time?

Is he an organizer in the UE?

Are you acquainted with Albert Smith?

Is he employed by the UE?

Mr. Emspak, has Max Helford ever been connected with UE as a field organizer?

Do you know them or not?

Is Max Helford at the present time a field organizer for the UE?

Was Phil Saba originally from local 155?

And is he now a field organizer for the UE in district 1?

Is Hank Rhine presently an international representative of the UE?

Is Jack Gorelick now affiliated with the UE?

Is Ernest Moyer a field organizer for UE in the Easton area?

Do you know James Lustig?

Is he an international representative of UE?

Is Morris Kersten an international representative of UE?

Is Fred Haug an international representative of UE?

Is Charles Newell an international representative of UE?

Is Leo Turner a field organizer in district 6?

Is Hugh Harley a field organizer for UE?

Is Arthur Garfield an international representative of UE?

Is Ernest DeMaio presently an international representative of UE?

Is Henry Fiering a field organizer for the UE?

Is Herbert Hirschberg an international representative of UE?

Is K. M. Kirkendahl a field organizer of the UE?

640 Is Robert Harrison a field organizer of the UE?

Is William Santora a field organizer of the UE?

Is Marcel Scherer an international representative of the UE?

Is Louis L. Sorti a field organizer of the UE?

Is Philip V. Gelder an international representative of the UE?

Is Perez Zagorin a field organizer of the UE?

Is Carl Brandt connected or associated in any way as an international representative or otherwise with UE?

Is Al Clough a field organizer?

Is Kermit Kirkendahl a field organizer?

Is John Thomas a field organizer?

Is Fred Keller a field organizer with UE?

Is John Mitchell a field organizer?

Is Fred Sheppart a field organizer?

Is L. B. Slagle a field organizer with UE?

Is Martin Sramek a field organizer with UE?

Is Robert B. Logsdon an international representative of UE?

John Bittman is a field organizer, is he not?

Is William Elconon an international representative?

Is H. M. Martinson a field organizer?

Is Irene Berman an international representative?

Is Allan Bjorklund a field organizer?

Is Thomas Foley a field organizer?

Is Robert Kirkwood an international representative?

Is Lee Lundgren an international representative?

Is William Mauseth a field organizer?

Is William Sheehan a field organizer?

Is Phillip H. Smith an international representative with the UE?

Do you know John T. Bernard?

Is he a field organizer for the UE in the Chicago district?

Is Peter Besch an international representative?

Is T. Louis Majors an international representative?

Is Robert McNaughton a field organizer?

Is John Paradise a field organizer?

Is Nick Tomasetti a field organizer?

Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?

Mr. Emspak, have you ever been associated with the Civil Rights Congress?

Louis Budenz was former editor of the Daily Worker, was he not?

Are you acquainted with James MacLeish?

Is he now president of district 4, United Electrical, Radio, and Machine Workers of America?

Are you acquainted with Salvatore M. Vottis?

On July 25, 1947, Mr. Emspak, Mr. Vottis, in sworn testimony before this committee, stated that he had attended fraction meetings of the Communist Party along with you and other members of the UE. Do you deny or affirm the statement made by Mr. Vottis?

Mr. Emspak, Mr. Vottis also testified you attended Communist Party meetings held in his home in Schenectady, N. Y. Do you deny or affirm that statement?

At this time are you a member of the Communist Party?

Were you a member of the Communist Party at any time before you signed the affidavit?

Have you ever paid Communist Party dues?

Have you ever signed an application to join the Communist Party?

Have you ever registered as a member of the Communist Party?

Did you, as a member of the Communist Party attend the trial of Earl Browder at Communist Party headquarters in New York City?

Which questions were pertinent to the subject under inquiry, refused to answer such questions; and as a result of said Julius Emspak's refusal to answer the aforesaid questions, your committee was prevented from receiving testimony and information concerning a matter committed to said committee in accordance with the terms of the subpena served upon the said Julius Emspak.

The record of the proceedings before the committee on December 5, 1949, during which Julius Emspak
641 refused to answer the aforesaid questions pertinent to the subject under inquiry is set forth in fact as follows:

The subcommittee of one met, pursuant to call, at 3:30 p. m. in room 226, Old House Office Building, Hon. Morgan M. Moulder, presiding.

Committee member present: Hon. Morgan M. Moulder.

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Mr. Moulder. The committee will come to order. Let the record show that on November 8, 1949, the Honorable John S. Wood, Chairman of the Committee on Un-American Activities, ordered, authorized and directed Morgan M. Moulder, a member of this committee, as a subcommittee thereof, to hold, conduct, and preside over hearings scheduled for this day.

* * * * * * * * * *

Mr. Moulder. You solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Emspak. I do.

Mr. Tavenner. Mr. Emspak, are you acquainted with Joseph Persily?

Mr. Emspak. Mr. Chairman, I would like to say something at this point.

Mr. Moulder. You mean in response to the question?

Mr. Emspak. I will answer the question; yes, in response to the question and as a statement of position.

What I say revolves around two points, one organizationally and another as an individual. Organizationally, my job as an officer of this union is to represent the interest of the membership as they determine it at the annual conventions and at other means they have of getting together and expressing themselves. My job is to administer that aspect to the best of my ability, using one very simple measuring stick, and that is: Does a given policy or action contribute to the well-being of the membership, individually and collectively?

As an individual I would like to say one thing, and that is this: The line of questioning that counsel is developing

now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am—

Mr. Moulder. How long will this statement take, Mr. Emspak?

Mr. Emspak. About two or three more minutes.

Mr. Moulder Proceed.

Mr. Emspak. Everything I am, I owe to the rich heritage and tradition of this country. I do not believe that a committee of this kind, especially in view of the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country too.

Mr. Moulder. I want to give you full opportunity to express yourself in answer to the question, but you are making an oration now.

Mr. Emspak. It is not an oration. It happens to be a very profound personal feeling.

Mr. Moulder. What is the question?

Mr. Tavenner. The question is: Are you acquainted with Joseph Pesily?

Mr. Moulder. How do you spell that?

Mr. Tavenner. P-e-r-s-i-l-y.

Mr. Emspak. Because I have a stake in this country—

Mr. Moulder. You are not answering the question. He asked you if you are acquainted with this man.

Mr. Emspak. I will answer it.

Mr. Moulder. Are you or not?

Mr. Emspak. I was on the verge of answering it.

Mr. Moulder. If you have any explanation to make you will be permitted to do so after you answer the question.

Mr. Emspak. Because of my interest in what is going on these days, because of the activities of this committee—

Mr. Moulder. Are you going to answer the question?

Mr. Emspak. Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

642 Mr. Moulder. Do do you think it corrupts you to answer the question?

Mr. Emspak. I certainly do.

Mr. Moulder. Why does it corrupt you?

Mr. Emspak. Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country.

Mr. Moulder. You are not going to take over this committee

Mr. Emspak. I don't want to.

Mr. Moulder. And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

Mr. Tavenner. Are you acquainted with Joseph Persily?

Mr. Emspak. For the reasons I stated before I answered it.

Mr. Moulder. Then you refuse to answer the question?

Mr. Emspak. No. I answered it.

Mr. Tavenner. Are you or are you not acquainted with Joseph Persily?

Mr. Emspak. I answered the question.

Mr. Tavenner. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. Moulder. The record will reveal that you have not answered the question.

Mr. Emspak. I have answered it to the best of my ability under the circumstances.

Mr. Moulder. Any further questions?

Mr. Tavenner. Yes. In what capacity is Joseph Persily associated with the UE at this time?

Mr. Emspak. It is the same question over again. I will give the same answer.

Mr. Tavenner. Is he an organizer in the UE?

Mr. Emspak. Mr. Chairman, it is the same question.

Mr. Tavenner. You refuse to answer that?

Mr. Emspak. I answered it.

Mr. Tavenner. Are you acquainted with Albert Smith?

Mr. Emspak. The same answer applies to that.

Mr. Tavenner. In other words, you are refusing to answer whether you are acquainted with him or not?

Mr. Emspak. I have answered the question as I see the answer.

Mr. Tavenner. Is he employed by UE?

Mr. Emspak. Mr. Chairman, I answered the question.

Mr. Moulder. Could you tell us who those people are, Mr. Counsel?

Mr. Emspak. Excuse me, please.

(Witness confers with his counsel.)

Mr. Tavenner. Joseph Persily and Albert Smith are the two persons whose names were mentioned.

Mr. Moulder. Who is Joseph Persily?

Mr. Tavenner. I thought he was connected with the UE, but I am unable to understand from the witness what the connection is, if any.

Mr. Moulder. Do our records reveal who he is?

Mr. Tavenner. I do not know whether they do or not, Mr. Chairman.

Mr. Emspak, has Max Helford ever been connected with UE as a field organizer?

Mr. Emspak. Mr. Chairman, on these question, which are all essentially the same, of course when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interruped me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee. I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

Mr. Moulder. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

Mr. Emspak. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job—

643 Mr. Moulder. Do you know them or not?

Mr. Emspak. That does not concern this committee at all.

Mr. Moulder. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. Emspak. No; I don't think this committee has a right to pry into my associations. That is my own position.

Mr. Tavenner. Is Max Helford at the present time a field organizer for the UE?

Mr. Emspak. Mr. Chairman, that is repetition of basically the same question, and the same answer stands.

Mr. Tavenner. Was Phil Saba originally from local 155?

Mr. Emspak. I answered that question.

Mr. Tavenner. And is he now a field organizer for the UE in district 1?

Mr. Emspak. I answered that question and that is the only answer I will give on any of my associations, for the reasons stated.

Mr. Tavenner. Is Hank Rhine presently an international representative of the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Jack Gorelick now affiliated with the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Ernest Moyer a field organizer for UE in the Easton area?

Mr. Emspak. Same answer.

Mr. Tavenner. Do you know James Lustig?

Mr. Emspak. Same answer.

Mr. Tavenner. Is he an international representative of UE?

Mr. Emspak. We can go on endlessly like this I suppose, but the same answer holds.

Mr. Tavenner. Is Morris Kersten an international representative of UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Fred Haug an international representative of UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Charles Newell an international representative of UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Leo Turner a field organizer in district 6?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Hugh Harley a field organizer for UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Arthur Garfield an international representative of UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Ernest De Maio presently an international representative of UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Henry Fiering a field organizer for the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Herbert Hirschberg an international representative of UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is K. M. Kirkendahl a field organizer of the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Robert Harrison a field organizer of the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is William Santora a field organizer of the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Marcel Scherer an international representative of the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Louis I. Sorti a field organizer of the UE?

Mr. Emspak. Same answer.

Mr. Moulder. Same answer is your refusal to answer for the reasons given?

Mr. Emspak. I gave specific reasons why I felt I should not participate in this kind of questioning, and I stand by that.

Mr. Tavenner. Is Philip V. Gelder an international representative of the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Perez Zagorin a field organizer of the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Carl Brandt connected or associated in any way as an international representative or otherwise with UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Al Clough a field organizer?

Mr. Emspak. Same answer.

644 Mr. Tavenner. Is Kermit Kirkendahl a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is John Thomas a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Fred Keller a field organizer with UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is John Mitchell a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Fred Sheppart a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is L. B. Slagle a field organizer with UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Martin Sramek a field organizer with UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Robert B. Logsdon an international representative of UE?

Mr. Emspak. Same answer.

Mr. Tavenner. John Bittman is a field organizer, is he not?

Mr. Emspak. Same answer.

Mr. Tavenner. Is William B. Elconon an international representative?

Mr. Emspak. Same answer.

Mr. Tavenner. Is H. M. Martinson a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Anthony De Maio an international representative of your union?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Irene Berman an international representative?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Allan Bjorklund a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Thomas Foley a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Robert Kirkwood an international representative?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Lee Lundgren an international representative?

Mr. Emspak. Same answer.

Mr. Tavenner. Is William Mauseth a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is William Sheehan a field organizer ?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Phillip H. Smith an international representative with the UE?

Mr. Emspak. Same answer.

Mr. Tavenner. Do you know John T. Bernard?

Mr. Emspak. Same answer.

Mr. Tavenner. Is he a field organizer for the UE in the Chicago district?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Peter Besch an international representative?

Mr. Emspak. Same answer.

Mr. Tavenner. Is T. Louis Majors an international representative?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Robert McNaughton a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is John Paradise a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Is Nick Tomasetti a field organizer?

Mr. Emspak. Same answer.

Mr. Tavenner. Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?

Mr. Emspak. I answered that, Mr. Chairman.

Mr. Tavenner. I say, have you ever been affiliated with such an organization?

Mr. Emspak. I answered that.

Mr. Moulder. You mean you refuse to answer for the reasons previously stated?

Mr. Emspak. I answered it in the terms I did when I said as far as my associations and affiliations are concerned, that is something a committee of this kind should not pry into.

645 Mr. Tavenner. In other words, you do not care to disclose whether you are affiliated with that organization?

Mr. Emspak. I answered that.

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Mr. Tavenner. Mr. Emspak, have you ever been associated with the Civil Rights Congress?

Mr. Emspak. Again, basically the whole line of questions is the same, so I will say I take the same position I expressed earlier.

Mr. Tavenner. Are you familiar with the fact that the Civil Rights Congress has also been cited as a Communist-front organization by the Attorney General?

Mr. Emspak. Same answer.

Mr. Tavenner. Are you acquainted with Louis Budenz?

Mr. Emspak. Same answer.

Mr. Tavenner. Louis Budenz was former editor of the Daily Worker, was he not?

Mr. Emspak. Same answer.

Mr. Tavenner. You are acquainted with the fact, are you not, that on March 18, 1947, in testimony before a committee of Congress, he identified you as a member of the Communist Party?

Mr. Emspak. Whatever Budenz does, don't ask me to underwrite. Sure, I am acquainted with him.

Mr. Tavenner. You know that he did so identify you as a member of the Communist Party. Do you desire to deny it?

Mr. Emspak. I have no desire to express any opinion on my associations to this committee for the reasons I stated.

Mr. Tavenner. So you decline to deny or affirm that you were a member of the Communist Party?

Mr. Emspak. I answered the question.

Mr. Tavenner. Are you acquainted with James MacLeish?

Mr. Emspak. Same answer.

Mr. Tavenner. Is he now president of district 4, United Electrical, Radio, and Machine Workers of America?

Mr. Emspak. Same answer.

Mr. Tavenner. Are you acquainted with Salvatore M. Vottis?

Mr. Emspak. Same answer.

Mr. Tavenner. That is all you care to say about that?

Mr. Emspak. Same answer, that is all.

Mr. Tavenner. On July 25, 1947, Mr. Emspak, Mr. Vottis, in sworn testimony before this committee, stated that he had attended fraction meetings of the Communist Party along with you and other members of the UE. Do you deny or affirm the statement made by Mr. Vottis?

Mr. Emspak. I won't discuss it at all other than in the terms I have.

Mr. Tavenner. Mr. Emspak, Mr. Vottis also testified you attended Communist Party meetings held in his home in Schenectady, N. Y. Do you deny or affirm that statement?

Mr. Emspak. I neither deny nor affirm it, Mr. Chairman.

* * * * * * *

Mr. Tavenner. At this time are you a member of the Communist Party?

Mr. Emspak. I answered that when I said the affidavit speaks for itself.

Mr. Tavenner. Is that all the answer you care to give?

Mr. Emspak. I should think that is plenty.

Mr. Tavenner. The affidavit spoke as of the date you gave it some months back, but you are not willing to speak now as to what you are?

Mr. Emspak. I understand an affidavit to be an affidavit, a document that is binding when one undertakes to subscribe to it. I further understand that the motives of this committee are to establish a beautiful frame to hang people who try to comply with the law. O. K. The affidavit is binding and that is that.

Mr. Tavenner. Is that all you have to say?

Mr. Emspak. I think that answers the question fully and completely.

Mr. Tavenner. Were you a member of the Communist Party at any time before you signed the affidavit?

Mr. Emspak. That I will answer the same way I did about an hour ago.

Mr. Tavenner. Have you ever paid Communist Party dues?

Mr. Emspak. I answered that.

Mr. Tavenner. Have you ever signed an application to join the Communist Party?

Mr. Emspak. I answered that.

646 Mr. Tavenner. Have you ever registered as a member of the Communist Party?

Mr. Emspak. I answered that.

Mr. Tavenner. Did you, as a member of the Communist Party attend the trial of Earl Browder at Communist Party headquarters in New York City?

Mr. Emspak. I answered that.

Mr. Moulder. You mean you refuse to answer for the same reasons you gave at the beginning?

Mr. Emspak. That is correct. I answered the best way I know how.

Because of the foregoing, the said Committee on Un-American Activities was deprived of answers to pertinent questions propounded to said Julius Emspak relative to the subject matter which, under Public Law 601, section 121, subsection Q(2), of the Seventy-ninth Congress, and under House Resolution 5 of the Eighty-first Congress, the said committee was instructed to investigate, and the refusal of the witness to answer questions, namely:

Mr. Emspak, are you acquainted with Joseph Persily?

In what capacity is Joseph Persily associated with the UE at this time?

Is he an organizer in the UE?

Are you acquainted with Albert Smith?

Is he employed by the UE?

Mr. Emspak, has Max Helford ever been connected with UE as a field organizer?

Do you know them or not?

Is Max Helford at the present time a field organizer for the UE?

Was Phil Saba originally from local 155?

And is he now a field organizer for the UE in district 1?

Is Hank Rhine presently an international representative of the UE?

Is Jack Gorelick now affiliated with the UE?

Is Ernest Moyer a field organizer for UE in the Easton area?

Do you know James Lustig?

Is he an international representative of UE?

Is Morris Kersten an international representative of UE?

Is Fred Haug an international representative of UE?

Is Charles Newell an international representative of UE?

Is Leo Turner a field organizer in district 6?

Is Hugh Harley a field organizer for UE?

Is Arthur Garfield an international representative of UE?

Is Ernest De Maio presently an international representative of UE?

Is Henry Fiering a field organizer for the UE?

Is Herbert Hirschberg an international representative of UE?

Is K. M. Kirkendahl a field organizer of the UE?

Is Robert Harrison a field organizer of the UE?

Is William Santora a field organizer of the UE?

Is Marcel Scherer an international representative of the UE?

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Is Fred Keller a field organizer with UE?

Is John Mitchell a field organizer?

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Is L. B. Slagle a field organizer with UE?

Is Martin Sramek a field organizer with UE?

Is Robert B. Logsdon an international representative of UE?

John Bittman is a field organizer, is he not?

Is William B. Elcona an international representative?

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Is Irene Berman an international representative?

Is Allan Bjorklund a field organizer?

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Is Lee Lundgren an international representative?

Is William Mauseth a field organizer?

Is William Sheehan a field organizer?

Is Phillip H. Smith an international representative with the UE?

Do you know John T. Bernard?

Is he a field organizer for the UE in the Chicago district?

Is Peter Besch an international representative?

Is T. Louis Majors an international representative?

Is Robert McNaughton a field organizer?

Is John Paradise a field organizer?

Is Nick Tomasetti a field organizer?

Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?

Mr. Emspak, have you ever been associated with the Civil Rights Congress?

Louis Budenz was former editor of the Daily Worker, was he not?

Are you acquainted with James MacLeish?

Is he now president of district 4, United Electrical, Radio, and Machine Workers of America?

Are you acquainted with Salvatore M. Vottis?

On July 25, 1947, Mr. Emspak, Mr. Vottis, in sworn testimony before this committee, stated that he had attended fraction meetings of the Communist Party along with you and other members of the UE. Do you deny or affirm the statement made by Mr. Vottis?

Mr. Emspak, Mr. Vottis also testified you attended Communist Party meetings held in his home in Schenectady, N. Y. Do you deny or affirm that statement?

At this time are you a member of the Communist Party?

Were you a member of the Communist Party at any time before you signed the affidavit?

Have you ever paid Communist Party dues?

Have you ever signed an application to join the Communist Party?

Have you ever registered as a member of the Communist Party?

Did you, as a member of the Communist Party attend the trial of Earl Browder at Communist Party headquarters in New York City?

which questions were pertinent to the subject under inquiry, is a violation of the subpena under which the witness had previously appeared, and his refusal to answer the aforesaid questions deprived your committee of necessary and pertinent testimony, and places the said witness in contempt of the House of Representatives of the United States.

[Stipulation Attachment No. 2 is inserted above as Emspak Exhibit No. 1 and is numbered page 37.]

694 **Stipulation Attachment No. 3**

TESTIMONY OF LOUIS J. RUSSELL—Recalled

Mr. Tavenner. Now will you proceed with your résumé as to Mr. Julius Emspak?

Mr. Russell. In sworn testimony of Salvatore M. Vottis before this committee during the hearings regarding communism in labor unions, he made the following statement concerning Julius Emspak and James Matles:

Mr. Stripling. Is it your opinion that James Matles and Julius Emspak are members of the Communist Party?

Mr. Vottis. Yes; they both are members of the party, to my knowledge.

Mr. Stripling. You sat in meetings with them?

695 Mr. Vottis. I sat in meetings with them. They have met in my home as members of the Communist Party. (See Hearings Regarding Communism in Labor Unions, p. 219.)

Report 1311 of the Special Committee on Un-American Activities, dated March 29, 1944, contains a chapter dealing with the activities of Julius Emspak, secretary-treasurer of the United Electrical, Radio, and Machine Workers of America, CIO, beginning on page 103.

Julius Emspak has been affiliated with the National Federation for Constitutional Liberties as one of the signers of a statement sponsored by that organization which hailed the War Department order on commissions for Communists. (See Daily Worker of March 18, 1945, p. 2.)

The congressional Committee on Un-American Activities cited the National Federation for Constitutional Liberties as being among a "maze of organizations" which were "spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law" (Rept. No. 1115, September 2, 1947, p. 3).

In a report dated March 29, 1944, page 50, of the Special Committee on Un-American Activities, it was stated that—

There can be no reasonable doubt about the fact that the National Federation for Constitutional Liberties—regardless of its high-sounding name—is one of the viciously subversive organizations of the Communist Party.

Attorney General Francis Biddle cited this group as—

part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program * * *. (It) was established as a result of a conference on constitutional liberties held in Washington, D. C., June 7-9, 1940 * * *. The defense of Communist leaders such as Sam Darcy and Robert Wood, party secretaries for Pennsylvania and Oklahoma, have been major efforts of the federation. (See Congressional Record, September 24, 1942, p. 7687.)

Attorney General Tom Clark cited this group as subversive and Communist in lists furnished the Loyalty Review Board, which were released to the press on December 4, 1947, and September 21, 1948.

According to the Daily Worker of March 5, 1946, Emspak was one of the sponsors of the Win-the-Peace Conference which was held in Washington, D. C., April 5-7, 1946.

Win-the-Peace Conference or National Committee to Win the Peace was cited by Attorney General Tom Clark as subversive and Communist in lists furnished the Loyalty Review Board, which were released to the press on December 4, 1947, and September 21, 1948.

Julius Emspak was one of the signers of the telegram sent to President Roosevelt by the Joint Committee for Trade-Union Rights in behalf of the International Fur and Leather Workers Union, defendants. (See Daily Worker of November 11, 1940, pp. 1 and 5.)

The Special Committee on Un-American Activities cited the Joint Committee for Trade-Union Rights as a "Communist front which, jointly with the International Labor

Defense, supported and defended Communist Party leaders of the International Fur and Leather Workers Union when they were serving prison terms." (Report dated March 29, 1944, p. 102).

A letterhead, dated September 3, 1938, lists Julius Emspak as one of the sponsors of the American Relief Ship for Spain.

696 The American Relief Ship for Spain was cited by the Special Committee on Un-American Activities as "one of the several Communist Party front enterprises which raised funds for loyalist Spain (or rather raised funds for the Communist end of that civil war)" (Report, March 29, 1944, p. 102).

Both a letterhead of September 28, 1939, and an undated circular list Emspak as a member of the labor advisory committee of the Consumers Union, an organization which was "founded in the winter of 1935-36 and grew directly out of a strike at Consumers Research. The Communist Party looked upon Arthur Kallet, founder of the Consumers Union, as its chief representative in the party's effort to exploit the grievances of consumers" (Report 1311 of the Special Committee on Un-American Activities).

In testimony of Mr. Walter S. Steele before the Committee on Un-American Activities, in July 1947, page 14, we find Julius Emspak listed as one of the initiators of the National Congress on Civil Rights on April 27-28, 1946, at which the Civil Rights Congress was born. In the committee's report on the Civil Rights Congress we find the following reference to Julius Emspak:

Member, initiating committee of Civil Rights Congress; cited by Louis F. Budenz as "Comrade Juniper," a secret member of the Communist Party, United States of America, in 1947; sponsor of the American Peace Mobilization and its successor, the Win-the-Peace Conference.

Attorney General Tom Clark cited the Civil Rights Congress as subversive and Communist in lists furnished to the Loyalty Review Board, which were released to the press

on December 4, 1947, and September 21, 1948. The congressional Committee on Un-American Activities cited the Civil Rights Congress as an organization formed in April 1946 as a merger of two other Communist-front organizations—International Labor Defense and the National Federation for Constitutional Liberties—"dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party" and "controlled by individuals who are either members of the Communist Party or openly loyal to it." (Report No. 1115, September 2, 1947, pp. 2 and 19.)

Mr. Emspak is referred to on pages 145, 149, 151, 152, 153, 170, 172, 176, 195, 215, 217, 219 of Hearings Regarding Communism in Labor Unions.

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Stipulation Attachment No. 4

697 Russell:

Exhibit No. 4: Affidavit of Clarence D. Copeland.
Exhibit No. 5: Affidavit of Richard W. McClellan.
Exhibit No. 6: Testimony of J. B. Matthews before House Education and Labor Subcommittee, September 29, 1948. (Printed in full following list of exhibits.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA

The United Electrical, Radio and Machine Workers of America, having between six and seven hundred thousand members, is the largest Communist-dominated organization in the American labor movement.

This vast segment of American labor, together with their dependents, make up a group of some 2,000,000 persons. They have economic interests which are vitally affected by the fact that this union is under Communist control.

Incredible as it may seem, they are to a great extent at the mercy of a Hungarian-born, alien Communist.

This man is James Matles. His title is UE Director of Organization.

Assisting Matles in this Communist control are roughly 450 Communist Party members or ardent fellow travelers.

These men, whom I shall presently name, follow both the Communist Party "line" and the orders of James Matles with complete fidelity. I shall submit their records to the committee.

How an organization representing the interests of so many loyal citizens can be dominated by a numerically insignificant group of Communists will be a profound mystery to all but those who have been initiated into the techniques of Communist control.

A group of Communists anywhere, outside Soviet Russia and its captive states, is synonymous with a fifth column. The Communist leadership of the UERMWA is a fifth column which reaches into some of the most important sections of the American industrial establishment.

The UERMWA has nation-wide bargaining relations with such giants as Westinghouse Electric Corp., General Motors Corp., General Electric Co., Radio Corporation of America, and Sylvania Electrical Products.

The fraud by which the Communists took over control of the union in the General Electric plant at Schenectady, N. Y., is illustrative of some of their unscrupulous tactics.

In May 1935, Israel Amter, then New York State chairman of the Communist Party, went to Schenectady where he gathered a small group of GE employees and local Communists together, to confer on strategy.

At this meeting Amter appointed Sadie Doran, local Communist Party organizer, to direct the strategy of taking over the union in the GE plant. She was in Schenectady until late in 1936 when the party sent Dorothy Loeb and Joseph Klein to replace her. In recent years, Dorothy Loeb has written the labor news column of the Daily Worker.

Later on, it has been learned from competent witnesses, the Schenectady Communists were told that they would

receive their instructions on union matters from James Matles. In 1936, the Communist Party strength in Schenectady was a half dozen active members, and the union had enrolled between 250 and 300 members. A half dozen obscure employees set about to pit their strength against a billion-dollar corporation.

After learning that approximately 3,500 dues-paying union members would be required before the NLRB in Washington would authorize a collective bargaining election, the half dozen Communist zealots sat down night after night to make out that many fraudulent union cards and dues receipts. They simply copied names and addresses from the telephone directories of the vicinity.

The NLRB then sent a representative to Schenectady from Washington. This representative took a casual glance at the fraudulent cards and ordered an election. The Communists won the election, and from that time to the present day they have dominated the union local at the GE plant—local 301 which at times has reached a membership as high as 27,000.

There is evidence that the same kind of fraud was practised elsewhere in the country by the Communists.

UE Local 301 at Schenectady is looked upon as something of the "mother local" throughout the UERMWA. Reliable witnesses report that the Communist Party has pursued a course of relentless determination to retain control of the local regardless of the cost, having sent
698 in scores of organizers and spent thousands of dollars whenever its grip seemed threatened. Probably no other industrial plant in the United States is more important to the national defense than the GE plant at Schenectady.

Like all Communist-controlled unions, the UERMWA toes the Kremlin line on all questions. It has never been guilty of a deviation, however slight.

In the early days of the union, the Communist Party's American League Against War and Fascism represented the foreign policy of Moscow's Politburo. The UERMWA

gave its whole-hearted support to the league, urging its locals to participate actively in its agitation and propaganda. The first point in the program of the American League Against War and Fascism read as follows:

"To work toward the stopping of the manufacture and transport of munitions and all other materials essential to the conduct of war, through mass demonstrations, picketing, and strikes."

The significance for national defense of the UERMWA's commitment to that kind of treason is at once apparent.

Late in 1937, the Communist Party "line" shifted to what it called "collective security of the democracies against fascism." At that time, the American League Against War and Fascism became the American League for Peace and Democracy, and all talk of stopping manufacture by political strikes was dropped. The UERMWA with complete servility, shifted its position to conform with the new Communist Party "line." The UE News, whose editor is Julius Emspak, has always been a mere echo of the Daily Worker.

The American Communists were quite unprepared by Moscow for the signing of the Stalin-Hitler pact by the beaming Molotov and Ribbentrop in August 1939. Nevertheless, they proceeded to bury the American League for Peace and Democracy without the usual respect which is accorded the dead. They went over to the new foreign policy of Ribbentrop. The UE News and Emspak, Matles and company went along obediently with Molotov and Ribbentrop. The new UERMWA and Communist Party slogans were "The Yanks Are Not Coming," and "No Convoys, No AEF." UE locals across the country adopted these slogans and passed resolutions in conformity with them. The new foreign policy culminated in September 1940, in the formation of the American Peace Mobilization. The White House was picketed and Wall Street was cursed with the old fervor. The UE leadership gave overwhelming evidence of its fifth column character.

On June 22, 1941, everything changed once more. The UE News shrieked a war-mongering patriotism. So did the Daily Worker. The UERMWA formally pledged a "No Strike" policy and held labor-management conferences on all-out production.

In the middle of 1942, the Communist Party received instructions from the Kremlin to begin nation-wide agitation for a "second front." UE leaders and many locals began to flood the White House with demands for a second front, without the slightest regard for our military readiness. The sole consideration was the new set of instructions dictated by Moscow.

The conclusion of the war brought a new agitation calculated to serve the interests of the Soviet Foreign Office. This time the slogan was "Bring the boys home." Once more the UE leadership was weighed in the Bolshevik balance and found not wanting.

Today the UE leadership has pitched its tents in the Wallace-Communist camp. UE general president, Albert J. Fitzgerald, presided at the Philadelphia convention of the Progressive Party. UE leaders in many parts of the country are running for office this year on the Progressive Party ticket. The UE News is currently devoting many pages to news and pictures of the fifth-columnist party.

It will come as a surprise to some to learn that the UE News, official organ of the UERMWA, is not published by the union but by the Trade Union Service, Inc., an entirely independent concern; not a single owner of the Trade Union Service, Inc., is a member of the UERMWA. Among the owners are Corliss Lamont, Frederick Vanderbilt Field, and James Waterman Wise—all of whom have extremely long records of affiliation with Communist-front organizations.

Last Saturday, Attorney General Clark caused to be published a revised list of subversive organizations. This newest list included the People's Radio Foundation. When the People's Radio Foundation applied to the Federal Communications Commission 2 years ago for an FM broad-

casting license, it listed its stockholders. It was then revealed that district 4 of the UERMWA is the largest single stockholder in this subversive Communist enterprise. Next in order of their stockholdings in the People's Radio Foundation are the Communist Party auxiliary, the International Workers Order; the Russky Golos
699 Publishing Corp. which publishes a Communist Party newspaper in the Russian language; and the Communist-controlled International Fur and Leather Workers Union.

Although it is a Communist-controlled union, the UERMWA does not adhere to class-struggle practices in all of its contractual relations with business concerns. One exception is the Electronics Manufacturers Association.

The secretary-treasurer of the Electronics Manufacturers Association is none other than Samuel J. Novick, its founder and most influential member. Novick heads a concern known as the Electronic Corp. of America.

The UE News of July 31, 1948, has a picture of a smiling group of men signing a contract between UE Local 430 and the Electronics Manufacturers Association. There are no expressions of class struggle on their faces.

The Communist Party's Sunday newspaper, the Worker, devoted more than two pages of its issue of December 10, 1944, to a highly eulogistic article on Samuel J. Novick and his Electronic Corp. of America. The article says: "The CIO-UE considers ECA's labor-management committee as a model." This is characteristic of the praise which both the UERMWA and the Daily Worker have meted out to Samuel J. Novick.

The Communist Party newspaper then makes the astonishing statement about the ECA (Electronic Corp. of America): "ECA is making money producing radios and scientific electronic gadgets, most of them of secret nature, for the United States armed forces." When it is remembered that this was written during the war, the question naturally arises: How did the Communist Party know about Novick's secret scientific gadgets in wartime and

why? The Committee on Un-American Activities has just reported as follows: "During the war, Electronic Corp. of America performed secret Government contracts in the amount of some $6,000,000. For a time it was the only contractor engaged in producing certain highly secret items for use in radar installations."

It is not hard to guess how the Communist Party knew about Novick's secret items for use in radar installations while the war was still on. Novick's public relations director was Carl A. Bristel, who was business manager of the Communist Party's New Masses under the name of Sol Becker, in 1942. Furthermore, the UE leaders who negotiated labor contracts with Novick and praise him so highly are Anthony Salese, president of UE Local 430; and Al Stearn, business manager of the same local. Both Salese and Stearn have been positively identified as members of the Communist Party. In other words, all of Novick's employees are under the control, in their union activities, of two members of the Communist Party.

Since Novick himself is something of a veteran Communist fellow traveler, it would appear that UE Local 430 is a "company union" so far as its relations with Novick are concerned. Novick was one of the original sponsors of the People's Radio Foundation which Attorney General Clark says is subversive and in which UERMWA District 4 is the largest stockholder. Novick was also a sponsor of the National Negro Congress and of an auxiliary of the International Labor Defense, both of which the Attorney General listed as subversive last Saturday. Furthermore, Novick has been a member of the board of directors of the Communist-controlled American-Russian Institute whose executive director is Henry Collins, Jr., who was named recently as a member of the Communist underground cell in Washington, D. C. Novick has also been affiliated with the Ambijan Committee for Emergency Aid to the Soviet Union. In view of all the facts, including his false statement which facilitated the entrance of a Soviet spy, Arthur Adams, into the United States, it is pertinent to ask if

Novick drew any line anywhere on the type of "emergency aid" which he was prepared to render to the Soviet Union. Novick was treasurer of the Communist-controlled American Committee for Spanish Freedom.

Novick's relations with the Communist leaders of the UERMWA raises the question of the posibilities of easy espionage in such a situation.

When we come to the matter of individual UE leaders, we find that the records show that several hundreds of these leaders are members of the Communist Party or have had significant affiliations with subversive Communist-front organizations. I shall take up 100 cases of individual leaders.

Pat Amato, president, UE Local 1105, Chicago, delegate to 1947 and 1948 UE conventions

Pat Amato sent May Day greetings to the Chicago Star, weekly Communist Party newspaper published in Chicago whose name was changed to the Illinois Standard in September 1948. (See Chicago Star, April 26, 1947.)

700 Amato was a member of the Chicago Star subscription Committee of Local 1150, thus indicating his more than casual interest in the circulation of this Communist Party newspaper. (See Chicago Star, March 20, 1948.)

Amato signed the manifesto defending the Communist Party which was published under the auspices of the Civil Rights Congress in May 1947. (See The Worker, May 25, 1947.) The Civil Rights Congress is on Attorney General Clark's list of subversive organizations. It was formed in 1946 by a merger of the International Labor Defense and the National Federation for Constitutional Liberties, both of which have been officially cited as subversive by many Government agencies.

R. W. Bergstrom, business agent, UE Local 1139, Minneapolis, delegate to 1948 UE convention

R. W. Bergstrom was one of the numerous CIO leaders who were affiliated with the Citizens Committee To Free Earl Browder. (See Daily Worker, January 25, 1942.)

The Citizens Committee To Free Earl Browder was a strictly Communist Party affair. Its executive secretary was the well-known Communist Elizabeth Gurley Flynn. Miss Flynn is not only a member of the national committee of the Communist Party but also a columnist for the Daily Worker. Louis Weinstock, administrative secretary of the Citizens Committee To Free Earl Browder, is now a member of the national committee of the Communist Party.

Bergstrom was also a member of the Minnesota State Committee To Free Earl Browder. (See Daily Worker, November 8, 1941.)

Bergstrom was also affiliated with the National Federation for Constitutional Liberties.

Under the auspices of the Civil Rights Congress, Bergstrom signed a statement denouncing the recent indictment of 12 national leaders of the Communist Party. (See Daily Worker, September 23, 1948.)

John T. Bernard, UE political action director, district 11, Chicago, UE field organizer

John T. Bernard, former Member of the House of Representatives, long ago acquired a reputation as a Communist. A mere listing of his affiliations is sufficient to confirm the accuracy of the charge that he has been an effective agent of the Communist Party.

He has been an instructor in the Abraham Lincoln School, the Communist Party's training school in Chicago which Attorney General Clark has listed as subversive.

He has been affiliated with the following Communist front organizations and enterprises:

American Committee for Defense of Puerto Rican Political Prisoners.
American Committee for Protection of Foreign Born.
American League for Peace and Democracy.
American League Against War and Fascism.
American Peace Mobilization.
American Relief Ship for Spain.

American Writers Congress.
Ben Leider Memorial Fund.
Citizens Committee for Harry Bridges.
Committee for a Democratic Far Eastern Policy.
Conference on Constitutional Liberties in America.
Council of U. S. Veterans.
Daily Worker.
Friends of the Abraham Lincoln Brigade.
Howard University Student Strike.
Illinois People's Conference for Legislative Action.
International Labor Defense.
International Workers Order.
Mother Bloor Celebration Committee.
Motion Picture Artists Committee.
National Federation for Constitutional Liberties.
New Masses.
Open Letter Protesting the Ban on Communists in the American Civil Liberties Union.
United American-Spanish Aid Committee.
Veterans of the Abraham Lincoln Brigade.
Washington Friends of Spanish Democracy.
Workers Alliance.

701 *Neil Brant, UE international representative*

The New York Times of December 8, 1945, reported that Neil Brant was the spokesman for 30,000 employees of the General Motors Corp. in rejecting an offer by GM of 13½-cent-an-hour increase in wages for these employees in its plants in four cities. It is apparent that Brant's position in the United Electrical, Radio, and Machine Workers of America is a key one.

On February 14, 1941, Neil Brant was arrested and charged with "defiling the United States flag" in the State of New Jersey. His police description attached to the record of his arrest reads as follows:

"White, male, 37, 5 feet 6 inches, 145 pounds, gray eyes, dark brown gray hair, slim build, sallow complexion, small mustache; occupation, labor organizer; birthplace, Russia."

It will be noted, of course, that Brant's arrest for defiling the United States flag occurred during the period of the Stalin-Hitler pact when the American Peace Mobilization was engaged in its nation-wide seditious activities and when the Communist Party of the United States was lending every possible aid to Hitler by obstructing the Nation's military preparedness program. Brant's attitude toward the United States flag during that period accurately reflected the Communist Party's views as they have been expressed throughout most of the party's 25-year history in this country. For example, when William Z. Foster, national chairman of the Communist Party, was a witness before a Committee of Congress, he was asked the following question:

"Do you owe allegiance to the American flag; does the Communist Party owe allegiance to the American flag?"

After some sparring, Foster replied:

"And all capitalist flags are flags of the capitalist class, and we owe no allegiance to them."

In the Daily Worker of July 14, 1936, there appears the following question: "Should Communists salute the American flag?" And the Daily Worker answered: "Our flag is the red flag of the international working class." Also, when one of the leading members of the Communist Party returned from the Soviet Union, he engaged in a demonstration, during which he clashed with the local police, and the Communist's own account of his words was published in the Daily Worker, as follows:

"I told the police to hell with the U.S.A. flag. I said that the flag I claimed was the one with the hammer and sickle, the red flag, which we will have some day."

On December 15, 1940, the New Jersey State Industrial Council had before it a resolution which read as follows:

"The council condemns the dictatorships and totalitarianism of nazism, communism, and fascism as inimical to the welfare of labor and destructive of our form of government."

Brant led the fight to delete "communism" from the resolution.

Neil Brant was a member of the executive board of the National Federation for Constitutional Liberties, one of the most influential of the Communist Party's fronts of recent years, and also an organization which Attorney General Clark named as subversive.

In 1937 the International Labor Defense set up a trade-union advisory committee, of which Neil Brant was a member (Labor Defender, October 1937, p. 18). The International Labor Defense, as almost everyone knows, was the legal arm of the Communist Party.

Neil Brant was an instructor in the Communist Party's Workers' School. (See school catalog, 1937.) It may be assumed that such an instructorship could be held only by a card-holding member of the Communist Party. In 1941 the Workers' School became the School for Democracy, and Neil Brant was a lecturer in that institution.

Brant was a participant in the April 6 peace rally, a Communist Party demonstration held at Madison Square Garden which was part of a nation-wide movement leading up to the formation of the American Peace Mobilization. (See Daily Worker, Apr. 4, 1940.)

Brant was a speaker for the American Student Union, another Communist-front organization. (See Daily Worker, Dec. 26, 1941.)

Albert Casale, business agent, UE local 1225, New York

When Israel Amter, veteran leader of the Communist Party, ran for the governorship of New York on the Communist Party ticket, his fellow Communists organized the Labor Committee for Amter as a part of their campaign for votes.

702 Albert Casale was a member of the Labor Committee for Amter.

Since Amter has always been openly a member of the Communist Party and since his candidacy for the governorship of New York was openly a candidacy of the Communist Party, it must be assumed that the members of his campaign committee had fully apprised themselves of these

facts, and were knowingly giving their support to the cause of communism in this instance.

Albert Casale is one of the many strategically placed officials of the UERMWA who have given their support to communism.

Casale was also affiliated with the Citizens Committee to Free Earl Browder. (See the Worker, January 25, 1942.)

Tony Cattonar, business agent, UE local 475, Brooklyn, delegate to 1947 and 1948 UE conventions

Tony Cattonar is a member of the Communist Party. He is also an alien, having been born in Italy.

Formerly, he went under the name of Carlo Andrea, and later Carlo di Andrea.

For a brief period, Cattonar was business manager of L'Unita del Popolo, the Communist Party newspaper which is published in the Italian language in this country.

Cattonar is the son-in-law of the veteran Communist Party leader, Israel Amter. It may be noted, parenthetically, that Amter and his wife, Sadie Van Veen, were prominent in the early organization days of the UERMWA, particularly in Schenectady.

David Davis, business agent, local 155, Philadelphia, delegate to 1947 and 1948 UE conventions

David Davis is one of the UE leaders who openly acknowledges his membership in the Communist Party. He is a member of its national committee, the highest governing body of the Communist Party in the United States. (See Daily Worker, July 30, 1945.)

Davis was also a member of the national committee of the now defunct Communist Political Association, and a member of the constitution committee at its founding convention in May 1944. (See Proceedings of Communist Political Association.)

Davis has also been affiliated with numerous Communist Party projects and front organizations.

He was a sponsor of the United May Day Conference in Philadelphia, a Communist-controlled affair in 1946. (See Daily Worker, April 4, 1946.)

In 1944, he shared the platform with William Z. Foster, head of the Communist Party, at a Philadelphia celebration of the twentieth anniversary of the Communist Party's Daily Worker. (See the Worker, January 9, 1944.) He sent a personal message to this Communist Party paper, in which he said: "Today we observe with justifiable pride the twentieth anniversary of the Daily Worker."

Under the auspices of the National Federation for Constitutional Liberties, he signed an appeal to Governor Olson on behalf of the California Communist leader, Sam Darcy. (See Daily Worker, December 19, 1940.) Attorney General Tom Clark has listed the NFCL as a subversive organization. Also under the auspices of the NFCL, Davis signed a message to the House of Representatives, calling for the end of the Special Committee on Un-American Activities.

He was the signer of a letter to President Roosevelt under the auspices of the Citizens Committee to Free Earl Browder, a Communist front whose objective was the release of Earl Browder from the Atlanta Federal prison where he was serving a 4-year term in connection with his conviction for passport fraud. (See Daily Worker, March 19, 1942.)

According to Soviet Russia Today, he sent greetings to the Soviet Union. (See November 1935 issue of magazine.)

Under the auspices of the Civil Rights Congress, he signed a manifesto in defense of the Communist Party. (See the Worker, May 25, 1947.) The Civil Rights Congress is also on Attorney General Clark's list of subversive organizations.

Anthony DeMaio, UE representative, district 11, Minneapolis, delegate to 1947 UE convention

The UE News, official organ of the United Electrical, Radio, and Machine Workers of America, proudly an-

nounced that Anthony DeMaio was back from the war, and is now on the pay roll of the international office of the UERMWA, assigned to Minneapolis. He is a brother of Ernest DeMaio, president of UE district 11.

703 Anthony DeMaio of UERMWA was in another war several years ago. He was one of the big shots in the Abraham Lincoln Brigade in Spain. Witnesses who had been in Spain with Anthony DeMaio testified under oath to acts of extreme sadism committed by DeMaio against men who were trying to get out of Spain. At the same hearing, on April 12, 1940, there was sworn testimony that DeMaio was a "killer"; that he shot defenseless American boys down in cold blood. The whole sickening story of Anthony DeMaio may be found in detail in volume 13 of the hearings of the Special Committee on Un-American Activities of the House of Representatives. I, personally, conducted the questioning of DeMaio when he was on the witness stand before the Special Committee on Un-American Activities.

As to DeMaio's identity as a member of the Communist Party, the following questions and answers appear in the printed record of the above date:

"Mr. MATTHEWS. Were you ever a member of the Communist Party?

Mr. DEMAIO. I was.

"Mr. MATTHEWS. When did you join the Communist Party?

"Mr. DEMAIO. I don't recall the exact date. It was when I returned from Spain.

"Mr. MATTHEWS. You did travel on a false passport when you went to Spain, didn't you, Mr. DeMaio?

"Mr. DEMAIO. I still refuse (to answer)."

The UE News further proudly offers the interesting bit of information that while DeMaio, the alleged brutal killer in Spain, was wearing a uniform in Europe he was placed in charge of a camp of 700 women in Czechoslovakia by the United States Army.

In other words, in spite of the official sworn testimony as to the character of this man, known to the FBI, and easily accessible to the United States Army, he was accepted for service, and was placed in a position of trust and responsibility.

Under the auspices of the Civil Rights Congress, DeMaio signed a statement denouncing the recent indictment of the 12 national leaders of the Communist Party. (See Daily Worker, September 23, 1948.)

Ernest DeMaio, UE International vice president, president, UE district 11, delegate to 1947 and 1948 UE conventions

Ernest DeMaio's Communist affiliations are such as to leave no doubt that he is a Communist and not just a casual supporter of one or two Communist enterprises.

He is on the board of directors of the Abraham Lincoln School, the Communist Party's training school in Chicago.

He was a sponsor of the seditious American Peace Mobilization.

Together with fellow officers of the UERMWA, DeMaio sent formal greetings to the American Slav Congress.

He was a sponsor of the Friends of the New Masses in Chicago. The New Masses was the weekly publication of the Communist Party.

DeMaio is a sponsor of the Joint Anti-Fascist Refugee Committee, 16 of whose national officers were convicted of contempt of Congress. He has spoken for the JAFRC in Chicago. (See Chicago Star, June 26, 1948.)

He was one of 144 Communist CIO leaders who publicly hailed the Daily Worker on the occasion of its twentieth anniversary in January 1944.

In the Daily Worker of May 19, 1947, Ernest DeMaio appeared as one of the signers of a manifesto issued under the auspices of the Civil Rights Congress. He sponsored the 1947 conference of the American Committee for Protection of Foreign Born.

DeMaio is a member of the National Wallace for President Committee, and is president of the Illinois labor division of Wallace's Progressive Party. (See Chicago Star, May 8, 1948.)

Six of the organizations with which DeMaio has been affiliated are on Attorney General Clark's list of subversive Communist fronts.

Joseph Dermody, UE international representative, district 4

At the request of Edgar L. Warren, head of the Conciliation Service of the United States Department of Labor, five leaders of the UERMWA went to Washington, D. C., on December 26, 1945, to confer with the Government representatives on the UERMWA's negotiations with General Electric, Westinghouse, and General Motors. These five leaders were James Matles, Joseph Dermody, Edward Matthews, Neil Brant, and Nathan Spero.

704 It is very significant that four of these five leaders of the UERMWA (all but Spero) have substantial Communist records, a fact which amply attests the Communist leadership of this CIO union.

Joseph Dermondy was a member of the Communist committee which was known as the Joint Committee for Trade Union Rights, a group whose avowed objective was to defend the Communist leaders in the fur industry. (See Daily Worker, November 11, 1940.)

Dermondy was also a member of the Progressive Committee to Rebuild the American Labor Party, a strictly Communist group which was set up for the purpose of capturing the ALP, an objective which was eventually achieved.

Dermody endorsed the American Youth Congress and urged all locals in UE district 4 to send delegates to it. (UE News, June 17, 1939.) Attorney General Clark has listed the AYC as subversive.

In his position as secretary of UE district 4, Dermody was a member of the New York Peace Committee for April

6. (See letter dated March 25, 1940.) This committee was a predecessor of the American Peace Mobilization.

Dermody protested to Gov. Herbert H. Lehman that there was a widespread movement to "intimidate" the Communist Party. (See Daily Worker, October 28, 1940.)

Thomas F. Dwyer, business agent, UE local 475, New York

Thomas F. Dwyer has made no secret of his membership in the Communist Party. In 1937, he was a candidate for the New York Assembly on the Communist Party ticket. In 1940 he ran for Congress on the Communist Party ticket. In 1941 he was the Communist candidate for sheriff of Kings County, N. Y.

Dwyer has spoken frequently at Communist Party meetings.

In the elections of 1945, Dwyer was a member of the Citizens Committee to Re-Elect Councilman Peter V. Cacchione. Cacchione was, of course, a well-known leader of the Communist Party.

William B. Elconin, UE international representative, Los Angeles, delegate to 1947 and 1948 UE conventions

William B. Elconin is the top leader of the UERMWA on west coast.

Elconin is one of the numerous CIO leaders who were affiliated with the Citizens Committee to Free Earl Browder.

Elconin was a speaker for the seditious American Peace Mobilization in Los Angeles.

According to the reports of the Tenney Committee, Elconin has publicly defended the west-coast Communist Party newspaper, People's Daily World.

He has also publicly defended Communist Party deportees.

At the present time Elconin is a trade-union sponsor of the Independent Progressive Party, the name by which the Wallace party goes in California.

Frank Emspak, former president, UE local 301, Schenectady

Frank Emspak is the brother of Julius Emspak and like him has been identified as a member of the Communist Party. He was recruited for the party in 1936 by Salvatore M. Vottis.

Julius Emspak, UE general secretary-treasurer, delegate to 1947 and 1948 UE conventions

Julius Emspak has been identified as "Comrade Juniper," top labor union commissar of the Communist Party in the United States.

Emspak's only rival for complete power in the UER-MWA is James Matles.

By any reasonable definition, Emspak is clearly a Communist. As editor of UE News, he has plugged the Communist Party "line" in all of its twists and turns.

Emspak has been affiliated with the following Communist-front organizations:

American Peace Mobilization, member, National Council, folder.

American Relief Ship for Spain, sponsor, letterhead, September 3, 1938.

American Slav Congress, sent greetings, program, August 6, 1944.

Committee to Defend America by Keeping Out of War, sponsor, letterhead, August 10, 1940.

Consumers Union of United States, Inc., member, Labor Advisory Committee, letterhead, September 28, 1939.

Emergency Peace Mobilization, sponsor, official program and call, August 31-September 2, 1940.

705 Joint Committee for Trade Union Rights, signer of telegram to President Roosevelt, Daily Worker, November 11, 1940, page 1.

National Committee to Abolish the Poll Tax, sponsor, PM, May 12, 1944, page 3.

Science and Society, contributor, Science and Society, winter 1943, page 88.

Charles Fay, president, UE local 475, vice president, UE district 4, delegate to 1947 and 1948 UE conventions

Charles Fay was a delegate to the meeting of the American Peace Mobilization which convened in New York City on April 6, 1941, and which was featured in the Daily Worker of May 2, 1941. It will be recalled that the APM was the notorious Communist-front organization which propagandized for the Communist Party "line" during the period of the Stalin-Hitler pact. It is hardly possible that any of those who participated in the activities and meetings of the APM were unaware of its completely Communist complexion.

Charles Fay signed a petition of the Citizens Committee to Free Earl Browder while he was in attendance, as a delegate, at the meeting of the American Peace Mobilization.

Under the auspices of the Civil Rights Congress, Fay signed a manifesto in defense of the Communist Party. (See the Worker, May 25, 1947.)

Henry Fiering, UE international representative, delegate to 1948 UE convention

In the Daily Worker of March 8, 1942, Fiering's name appeared, a signer of a statement released by the National Free Browder Congress.

In 1941, Fiering was a prominent leader of the Vincent Favorito Defense Committee. Favorito was a Communist Party member in Cleveland, Ohio, under a Government deportation order for illegal entrance into the United States.

On June 5, 1946, Ralph E. Moses and Ben H. Cromwell, president and secretary, respectively, of UE Local 801 in Dayton, Ohio, resigned their offices and charged that Henry Fiering was the Dayton leader of the Communist Party and that, as such, he held complete dictatorial control over local 801. The international office of the UERMWA named Arthur Garfield to take over the affairs of local 801. Fiering was shifted to Winston-Salem, N. C.

Fiering was one of 550 signers of a public manifesto issued by the Civil Rights Congress in defense of the Communist Party, for release on May 25, 1947.

Charles Fisher, negotiator, UE local 1145

Charles Fisher was a delegate to the meeting of the American Peace Mobilization which convened in New York City on April 6, 1941. The APM was the notorious Communist-front organization which propagandized for the Communist Party "line" during the period of the Stalin-Hitler pact.

It is pertinent to note that one Morton Friedman was dismissed from his position on the War Manpower Commission on the ground that he had been affiliated with the American Peace Mobilization, and that Friedman's dismissal was upheld in the courts to which he appealed. In March 1947, the Supreme Court refused to review the decision of the lower courts in the Friedman case and thus, in effect, ruled that affiliation with this one Communist-front organization (the APM) was sufficient ground for challenging the loyalty of a Government employee. The same applies to labor-union leaders.

Charles Fisher signed a petition of the Citizens Committee to Free Earl Browder while he was in attendance, as a delegate, at the meeting of the American Peace Mobilization. (See Daily Worker, May 2, 1941.)

In 1940, Fisher was affiliated with the Joint Committee for Trade-Union Rights, a Communist-front set-up to defend the Communist leaders in the fur industry. (See Daily Worker, November 11, 1940.)

He was also a sponsor of the Wisconsin State Conference on Social Legislation in the year 1940.

Albert J. Fitzgerald, UE general president, delegate to 1947 and 1948 UE conventions

The consensus of opinion on Albert J. Fitzgerald among those who have studied the Communist Party leadership of the UERMWA is that he is a willing stooge for the Emspak-Matles Communist machine.

At the present time Fitzgerald is in the forefront of the Wallace third party movement, a movement which is now engaging the principal energies of the Communist Party.

706 Fitzgerald has been affiliated with the following Communist-front organizations:

American Slav Congress, sent greetings, program, August 6, 1944.

Greek American Council, signer of open letter on Greece, the Bulletin, January 1946, page 1.

National Citizens Political Action Committee, committee member, folder.

National Committee to Abolish the Poll Tax, sponsor, PM, May 12, 1944, page 3.

National Committee to Combat Anti-Semitism, sponsor, news release, May 24, 1944.

National Wallace for President Committee, co-chairman, news release, March 23, 1948.

Michael Fitzpatrick, former president, UE district 6, leader UE local 601.

Michael Fitzpatrick, brother of Thomas J. Fitzpatrick, has been identified as a member of the Communist Party in sworn testimony before the Committee on Un-American Activities of the House of Representatives.

While he was president of UE district 6, Michael Fitzpatrick signed a "peace proclamation" which was an enterprise of the Communist Party in the period of the Stalin-Hitler pact and which was part of a nation-wide Communist agitation leading up to the formation of the American Peace Mobilization. (See Daily Worker, January 3, 1940.)

Thomas Fitzpatrick, president, UE local 601, East Pittsburgh, delegate to 1947 and 1948 UE conventions

Last year at a meeting of the Pennsylvania Industrial Union Council, CIO, there was "a bitter floor fight over communism." After this debate, it was voted to ban

Communists, Fascists, Nazis, members of the Ku Klux Klan, and other hate-disseminating organizations from holding any of the 12 offices of the Pennsylvania Industrial Union Council.

Thomas Fitzpatrick led the fight against this ban on the totalitarians and the hate-mongers. His fight against the move was in the strictest conformity with the "line" of the Communist Party. (See New York Times, April 26, 1947.)

Fitzpatrick has not been a frequent joiner of Communist front organizations, but he signed the Civil Rights Congress manifesto defending the Communist Party. (See Daily Worker, May 25, 1947.)

There is sworn testimony given before the Committee on Un-American Activities that Thomas Fitzpatrick is a member of the Communist Party.

Thomas F. Flanagan, business agent, UE local 617, Sharon, Pa., delegate to 1947 and 1948 UE conventions

Thomas Flanagan was a delegate to the 1947 national convention of the American Committee for Protection of Foreign Born, held in Cleveland, October 25-26. He was a member of the resolutions committee of the convention. (See proceedings of the 1947 convention of the ACPFB.) The ACPFB was cited as subversive by Attorney General Clark on September 25, 1948.

Thomas Foley, UE field organizer, Minneapolis

Thomas Foley has been an open member of the Communist Party. In 1932, he ran for attorney general in Minnesota on the Communist Party ticket.

In 1944, Foley sent greetings to the Daily Worker on the occasion of its twentieth anniversary. He wrote: "Cordial greetings to the Daily Worker, a win-the-war labor paper and many more successful anniversaries." (See the Worker, January 9, 1944.)

James Garry, business manager, UE local 1227, delegate to 1947 and 1948 UE conventions

James Garry has been seen going and coming at the national headquarters of the Communist Party.

In 1940, Garry presided over the youth session of the May Day Conference, which was in charge of planning the Communist Party's May Day parade. (See Daily Worker, April 21, 1940.)

On May 26, 1941, the National Labor Committee Against War, an affiliate of the seditious American Peace Mobilization, held a conference in New York City. James Garry was one of the labor union leaders who signed the call to this conference.

Under the auspices of the Civil Rights Congress, Garry signed a manifesto in defense of the Communist Party. (See the Worker, May 25, 1947.)

707 Garry is a member of a Communist-front organization which is known as the Citizens Committee to Defend Representative Government, the object of which is to place Communist Simon W. Gerson on the New York City Council. (See New York Times, February 19, 1948.)

Leo Gaudreau, recording-secretary, UE local 271, Beverly, Mass., delegate to 1947 UE convention

Leo Gaudreau publicly announced his membership in the Communist Party. The Daily Worker of March 28, 1943, printed a letter from Gaudreau which read in part as follows: "I am joining the Communist Party because I am convinced that it is a 100 percent win-the-war prolabor organization."

Carl Geiser, former president, UE local 1227, Long Island City

Carl Geiser is an avowed member of the Communist Party. He went to Spain to aid the Spanish Loyalists in the Civil War in that country. He traveled on passport No. 380318, dated March 29, 1937, and gave his age as 28. Earl Browder testified under oath that 60 percent of the

Americans who went to Spain to fight with the so-called Abraham Lincoln Brigade were members of the Communist Party. The 1938 New York Yearbook of the Young Communist League listed Geiser as one of its members who had fought in Spain. (See page 4.)

In the Daily Worker of December 5, 1946, Geiser signed a protest of the Queens County (New York) Communist Party against the refusal of Borough President Burke to grant the use of the Lost Battalion Hall for an election rally of the Communist Party.

In 1933, the Communists set up a front organization known as the American Committee for Struggle Against War. The executive director of this organization was Donald Henderson, an avowed member of the Communist Party. Carl Geiser was a member of the national committee of this organization. (See appendix IX of the Special Committee on Un-American Activities of the House of Representatives, p. 409.)

Geiser was a member of the arrangements committee which set up the American League Against War and Fascism in September, 1933. This was a Communist-front organization which the FBI, in an official memorandum of May 7, 1942, cited as subversive. The name of the organization was later changed to the American League for Peace and Democracy. (See appendix IX, p. 428.)

Carl Geiser was a member of the National Committee for the Student Congress Against War which was held at the University of Chicago, December 27-29, 1932. It was a part of the Communist-front movement which was launched at Amsterdam, Holland, in August, 1932. (See Appendix IX, p. 1620.)

After his return from Spain, Geiser became executive secretary of the Friends of the Abraham Lincoln Brigade, a Communist-front organization. (See Daily Worker, July 21, 1939.)

Geiser was a speaker for the Sunnyside Peace Council, one of the many predecessors of the American Peace Mobilization. (See Daily Worker, April 18, 1940.)

Samuel Goldberg, business representative, UE local 134, Camden, N. J., delegate to 1947 and 1948 UE conventions

Samuel Goldberg signed the Civil Rights Congress manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

In September 1948, the Civil Rights Congress took a statement to the White House, denouncing the recent indictment of 12 national leaders of the Communist party. Samuel Goldberg was one of the signers of this statement. (See Daily Worker, September 23, 1948.)

The Civil Rights Congress was cited as subversive by Attorney General Clark on September 25, 1948.

Jack Gorelick, field organizer, UE district 1, Scranton, Pa.

Jack Gorelick is a member of the Communist Party. He is a protege of Joseph Dougher, one of the leaders of the Communist Party in Pennsylvania, and a member of the national committee of the party. It was through Dougher's instrumentality that Gorelick received his appointment as a UE organizer.

Gorelick attends the Communist Party meetings, which are held in Ukraine Hall, Scranton, and the executive committee meetings of the Communist Party which are held in the home of Joseph Dougher in Wilkes-Barre. In May 1946, he attended a Communist Party leadership training school in Scranton.

Last year, Gorelick negotiated a UE collective-bargaining contract with the Teleradio Engineering Corp. of Wilkes-Barre.

708 *William Harper, chief steward, UE local 601, Pittsburgh, delegate to 1947 and 1948 UE conventions*

William Harper signed the Civil Rights Congress manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

In September 1948, the Civil Rights Congress took a statement to the White House, denouncing the recent indictment of 12 national leaders of the Communist Party. William Harper was one of the signers of this statement. (See Daily Worker, September 23, 1948.)

The Civil Rights Congress was cited as subversive by Attorney General Clark on September 25, 1948.

Clarence A. Hathaway, business agent, local 1139, Minneapolis, delegate to 1947 and 1948 UE conventions

Clarence A. Hathaway was for many years editor of the Daily Worker. Evidence of how fearful that paper was, and is, of deviating from the correct Moscow line is found in an exchange of cables between Hathaway, as editor, and RUNAG, the official Soviet press bureau, on April 16, 1939, via RCA-Communications.

RUNAG cables Hathaway as follows:

DAIWORK New York for Hathaway Stop Referring to your request Colon Nothing known here about your concrete question Paragraph USSR foreign policy clearly formulated in Stalins report on Eighteenth Party Congress as published SUNWORKER special supplement March 12 page 2 columns 3 and 4 RUNAG.

DAIWORK is the cable address of the Daily Worker.

On October 10, 1940, a sensation was caused by Hathaway's expulsion from the Communist Party while still editor of the Daily Worker and a member of the "big three" central executive committee. His expulsion was for "failure to meet personal and political responsibilities assumed by him; for deserting; and for failing and refusing to take steps to rehabilitate himself."

Hathaway then dropped out of sight for more than a year, when he showed up in New York, to serve a 30-day workhouse sentence for criminal libel. After that time, he kept in the background of party affairs, although being seen at party demonstrations and in conversation with party leaders.

When he popped up, safe in the arms of the UERMWA as business agent, there was ample proof of his readmission to the Communist fold.

Hathaway was a member of the national board of the American League Against War and Fascism, and was prominent in a score of other Communist-front organizations.

Fred Haug, business agent, UE local 707, Cleveland, delegate to 1947 and 1948 UE conventions, former field organizer, UE district 6, Pittsburgh

Fred Haug has been a member of the Communist Party for many years.

Haug was one of the 550 signers of a public manifesto defending the Communist Party issued by the Civil Rights Congress for release on May 25, 1947.

On June 22-23, 1935, the Communist Party held a conference in Washington, D. C. The gathering was known as the National Emergency Conference Against the Government wage program. Five well-known Communist Party members were appointed as a "continuations committee" to carry on the work of this conference. One of the five was Fred Haug. The secretary of the "continuations committee" was Phil Frankfeld who has been a top leader of the Communist Party for about 20 years. (For the official Communist Party report on this conference, see appendix IX, pp. 1217-1221, of the Special Committee on Un-American Activities of the House of Representatives.)

In the elections of 1936, Fred Haug was a candidate for "presidential elector" on the Communist Party ticket in the State of New Jersey. The record of Haug's candidacy is on file in the office of the Secretary of the State of New Jersey.

Haug has been one of the top leaders of the Communist Party in Cleveland, Ohio, since he transferred his activities from New Jersey.

Haug was a signer of a Pittsburgh Peace Proclamation, a forerunner of the American Peace Mobilization. (See Daily Worker, January 3, 1940.)

Frank Hellman, UE leader in Philadelphia

Frank Hellman is a member of the Communist Party and also an alien, having been born in Rumania. Early this year he was arrested for deportation.

In reporting Hellman's arrest, the UE News declared: "A wave of protest is sweeping UE locals all over the country against the Justice Department's deportation campaign against progressive labor leaders." Like
709 all of the official Communist Party publications, the UE News describes the arrested Communists as "progressive labor leaders." (See UE News, March 20, 1948.)

For many years, Frank Hellman was district organizer of the International Workers Order in Philadelphia. The IWO is an auxiliary of the Communist Party and has been cited as subversive by Attorney General Clark.

Hellman was a sponsor of the Tallentire Jubilee Committee, a Communist organization formed to celebrate one of the anniversaries of the veteran Communist Party leader, Norman Tallentire.

C. S. Jackson, UE international vice president, UE district 5, delegate to 1947 and 1948 UE conventions

Clarence S. Jackson is president of the Canadian district of the UERMWA, and by virtue of that position one of the UE international vice presidents.

Early in World War II, the Canadian Government interned Jackson as "a dangerous Communist."

Although Jackson was a delegate to the 1948 convention of the UERMWA, he did not attend. He was stopped at the border and denied entrance into the United States by our immigration authorities.

Leo Jandreau, UE international vice president, president, UE district 3, business agent, UE local 301, Schenectady, delegate to 1947 and 1948 UE conventions

Leo Jandreau has been identified as a member of the Communist Party by Salvatore M. Vottis in sworn testimony before the Committee on Un-American Activities of the House of Representatives. Mr. Vottis testified that he had collected Jandreau's Communist Party dues for a period of 2 or 3 years. Vottis was also financial secretary of UE local 301. According to Vottis, Leo Jandreau was signed up as a member of the Communist Party by Dorothy Loeb, a writer for the Communist Party's Daily Worker. (See hearings of the Committee on Un-American Activities, July 25, 1947, pp. 220-221.)

In January 1948, the Communists set up a front which was called the Citizens Legislative Conference of New York. The Communist character of this conference was fully exposed by Frederick Woltman in the New York World-Telegram. Leo Jandreau was a member of this Communist front organization. (See program, January 10, 1948.)

Leo Jandreau is a member of the National Wallace for President Committee, the outstanding Communist front movement of the present time. (See press release, March 23, 1948.)

Sam Kanter, organizer, UE local 475

Sam Kanter is an avowed member of the Communist Party. Unlike many other members of the Party, Kanter makes no secret of his membership.

Kanter was a speaker for the Communist Political Association, the organization which temporarily replaced the Communist Party from May 1944, to July 1945. (See Daily Worker, September 12, 1944.)

On January 22, 1946, Kanter was one of the featured speakers at a rally of the Communist Party in Brooklyn, N. Y. (See Daily Worker, January 20, 1946.) Headlined on this program with Kanter was Elizabeth Gurley

Flynn, one of the two or three outstanding women Communists in America.

Fred Keller, field organizer, UE district 7, delegate to 1947 and 1948 UE conventions

Fred Keller testified under oath before the Special Committee on Un-American Activities that he went to Spain as a member of the Abraham Lincoln Brigade at the age of 23 and became a "commissar of war." Inasmuch as Earl Browder testified that 60 percent of the members of the Abraham Lincoln Brigade were members of the Communist Party, there is a strong probability that Keller could not have risen to the rank of "commissar of war" unless he had been a member of the Communist Party. Two other UE officials, Anthony DeMaio and Carl Geiser, who also went to Spain with the Abraham Lincoln Brigade have admitted that they were members of the Communist Party.

When Keller returned from Spain, he became an official of the Communist-controlled Friends of the Abraham Lincoln Brigade. (See vol. 13, p. 7780, hearings of the Special Committee on Un-American Activities.)

Keller was also a post commander of the Communist-controlled Veterans of the Abraham Lincoln Brigade. (See Daily Worker, April 21, 1940.)

Keller was a member of the board of directors of the New York branch of the American Committee for Protection of Foreign Born, listed as subversive by Attorney General Clark on September 25, 1948. (See organization's letterhead, January 2, 1941.)

710 Under the auspices of the Civil Rights Congress, Keller signed a manifesto defending the Communist Party. (See the Worker, May 25, 1947.) The CRC is also on Attorney General Clark's latest list of subversive organizations.

John Kelliher, president, UE local 1154, Chicago, delegate to 1947 and 1948 UE conventions

John Kelliher signed the Civil Rights Congress manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

Kelliher sent May Day greetings to the Chicago Star, Communist Party newspaper in Chicago whose name was recently changed to the Illinois Standard. (See Chicago Star, April 26, 1947.)

Alex Kempf, secretary-treasurer, UE local 1119, Chicago, delegate to 1947 UE convention

Alex Kempf signed the Civil Rights Congress manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

Kempf sent May Day greetings to the Chicago Star, Communist Party newspaper in Chicago which is now known as the Illinois Standard. (See Chicago Star, April 26, 1947.)

Morris Kerstein, member negotiating committee, UE Local 430, New York, N. Y., delegate to 1947 UE convention

UE Local 430 has collective bargaining relations with the employers association covering 15,000 employees in radio and radio parts establishments in New York City. Morris Kerstein is one of the important contract negotiators of this UE local.

Morris Kerstein has been identified as a member of the Communist Party in sworn testimony by James Conroy, former member of the party, before the Committee on Un-Aerican Activities of the House of Representatives.

Robert Kirkwood, UE international representative, delegate to 1948 UE convention

Robert Kirkwood was a speaker at the Communist May Day parade in Chicago in 1941. According to the Daily Worker, one of the banners which was featured in the parade was "No Convoys, No AEF." This was in keeping with the line of the Communist Party in that period of the Stalin-Hitler pact. Co-speakers at the parade were Alfred Wagenknecht, then Illinois State secretary of the Communist Party, and Ernest DeMaio, now president of UE district 11. Another slogan featured in the parade,

according to the Daily Worker, was "Free Earl Browder." (See Daily Worker, May 4, 1941.)

Kirkwood signed the Civil Rights Congress manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

Irving Krane, business manager, UE Local 1150, Chicago, delegate to 1947 and 1948 UE conventions

There can be little, if any, doubt that Irving Krane is a member of the Communist Party.

For a number of years, Krane was Illinois State secretary of the International Labor Defense. The ILD was accurately described by the FBI as "the legal arm of the Communist Party," and it follows that any State secretary of the organization would undoubtedly be a member of the Communist Party. (See ILD letterhead, January 20, 1939.) Krane was a delegate to the national conference of the ILD in 1939 in Washington, D. C. (See Equal Justice, July 1939.) He was also a member of the national committee of the International Labor Defense. (See letterhead, December 25, 1939.)

A number of years ago the Communists organized a front which was known as the Better Chicago League. Irving Krane was one of its sponsors. (See Equal Justice February 1939.)

Krane sent greetings to the Chicago Star, Communist Party newspaper, on May Day of 1947. (See Chicago Star April 26, 1947.) Furthermore, he is a member of the Chicago Star (now the Illinois Standard) subscription committee of UE Local 1150, thus indicating a more than casual interest in this Communist Party newspaper. (See Chicago Star, March 20, 1948.)

Under the auspices of the Civil Rights Congress, Krane signed a manifesto defending the Communist Party. (See the Worker, May 25, 1947.) On September 25, 1948, Attorney General Clark listed the Civil Rights Congress as a subversive organization.

711 It is apparent that Irving Krane is one of the Communists in the UERMWA on whom the Communist Party calls for support of its enterprises and front organizations.

Joseph Kres, vice president, UE district 7, business agent, UE Local 735, Cleveland, delegate to 1947 and 1948 UE conventions

According to UE News, Joseph Kres was named to lead CIO-PAC work in Ohio and Kentucky during the 1946 election campaign. He is now a member of the National Wallace for President Committee. (See press release, March 23, 1948.)

In January, 1944, the Daily Worker, newspaper of the Communist Party, celebrated its twentieth anniversary. In two decades which ended that month, the Daily Worker had demonstrated a thousand times over that it was the quisling mouthpiece of the Kremlin in the United States. Despite this evident fact, 144 CIO leaders hailed the paper on its twentieth anniversary. Among them was Joseph Kres.

Kres signed a letter denouncing the Cleveland Press for publishing the names of Ohio signers of Communist Party election petitions. (See Daily Worker, September 19, 1940.)

During the period of the Stalin-Hitler pact, Kres denounced United States naval convoys, in keeping with the Communist Party's position on that question. (See Daily Worker, May 30, 1941.)

Kres was a sponsor of the Schappes Defense Committee, a Communist front organization set up to defend Morris U. Schappes who had been convicted for perjury. (See Daily Worker, October 13, 1941.)

Kres was a signer of the "six-point program" of the Council on African Affairs, a Communist front organization on Attorney General Clark's list of September 25, 1948. (See New Africa, October, 1945.)

Kres sent greetings to the 1945 national conference of the American Committee for Protection of Foreign-Born, an organization also on the Attorney General's latest list of subversive groups. (See the Lamp, November 1945.)

Under the auspices of the Civil Rights Congress, Kres signed a manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

Sam Kushner, business manager UE Local 1119, Chicago, delegate to 1947 and 1948 UE conventions

Sam Kushner's adherence to communism is evidenced by the fact that he sent greetings to the Daily Worker on the occasion of its twentieth anniversary in January 1944.

He also sent May Day greetings to the Chicago Star, a Communist Party newspaper which changed its name to the Illinois Standard in September 1948. (See Chicago Star, April 26, 1947.) He has contributed an article to the Chicago Star. (See issue of August 21, 1948.)

Kushner signed the Civil Rights Congress manifesto defending the Communist Party. (See the Worker, May 25, 1947.) He is head of the labor committee of the Illinois Civil Rights Congress. (See Chicago Star, February 28, 1948.) The CRC was listed as subversive by Attorney General Clark on September 25, 1948.

Milo Lathrop, legislative representative, UE district 3

Milo Lathrop has been identified as a member of the Communist Party in testimony before the Committee on Un-American Activities. In this testimony, he was alleged to have been secretary of the Yale University unit of the Communist Party.

Several years ago, Lathrop was on the staff of Consumers Union with the designation of field representative. (See Consumer Reports, November 1942.) Consumers Union is the Communist front organization whose director is Arthur Kallet who used the Communist Party alias "Edward Adams."

Lathrop was a speaker for the League of Women Shoppers, a Communist front organization. (See New York Herald Tribune, September 28, 1941.)

James Lerner, staff writer, UE News

James Lerner's by line appears frequently in the UE News, official organ of the UERMWA.

Lerner joined the Young Communist League many years ago. He was a sponsor of the YCL-controlled American Committee for the International Student Congress Against War and Fascism. (See program, December 29, 1934.)

Lerner was a member of the national executive committee of the American League Against War and Fascism, a Communist-front organization cited as subversive by Attorney General Clark on September 25, 1948. (See organization's letterhead, August 22, 1935.) He was also a member of the secretarial staff of the American League Against War and Fascism.

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Lerner was a member of the national council of the Communist-controlled American Youth Congress.

He was a staff member of Champion, official organ of the Young Communist League.

As a member of the YCL-controlled International Youth Commission, Lerner was a visitor to Spain during the civil war in that country.

Lerner was a delegate to the Communist-controlled World Youth Congress which was held at Vassar College in August 1938.

Richard Linsley, international representative, UE district 2

Richard Linsley's Communist connections are such as to make it reasonably clear that he is a Communist.

In July 1943, Linsley was a member of the Greater Boston Reception Committee to the Russian delegation.

Richard Linsley was a member of the Committee to Sponsor the Daily Worker and the Worker 1945 fund campaign. This connection alone would make it clear that

Linsley is a Communist, by any reasonable definition of that word.

Linsley was also a member of the Reichstag Fire Trial Anniversary Committee whose announced purpose was the honoring of George Dimitroff, head of the Communist International.

Linsley is a member of the board of trustees of the Samuel Adams School for Social Studies, the Communist Party's training school in Boston.

In 1941, Linsley sent an Armistice Day message to President Roosevelt pledging "all production," thus reflecting the change in the Communist Party "line" which occurred on June 22, 1941, when Hitler attacked the Soviet Union. (See Daily Worker, November 11, 1941.)

Stanley Loney, UE international vice president; president, UE district 6; delegate to 1947 and 1948 UE conventions

Stanley Loney is a member of the National Wallace-for-President Committee, by far the outstanding Communist-front movement of the present time.

Early this year when Loney succeeded Thomas J. Fitzpatrick as president of UE district 6, the district council urged all its locals to give "serious thought" to the candidacy of Henry A. Wallace. The Communist Party is the most influential group in the Wallace-for-President movement, and the UERMWA is the largest single reservoir of votes for the Progressive Party.

Stanley Loney was a delegate to the 1947 national conference of the American Committee for Protection of Foreign Born, the oldest Communist-front organization in the United States and one of the subversive organizations listed by Attorney General Clark on September 25, 1948. Loney was a member of the nominating committee of the 1947 conference of the ACPFB. (See Proceedings of the conference.)

Lee Landgren, international representative, UE local 1150; delegate to 1947 and 1948 US conventions

Lee Landgren sent May Day greetings to the Chicago St..., Communist Party newspaper in Chicago. (See Chicago Star, April 26, 1947.)

He is a member of the subscription committee of the Chicago Star (now the Illinois Standard) in UE local 1150. (See Chicago Star, March 29, 1948.)

James Lustig, UE representative, district 4, delegate to 1947 and 1948 UE conventions

James Lustig is one of the most important of the many Communist Party members who hold strategic positions in the United Electrical, Radio, and Machine Workers of America. Lustig has not concealed his membership in the Communist Party, as have many others. In 1931, he was candidate for alderman in the Bronx on the Communist Party ticket.

In 1933, Lustig was organizer for the Steel and Metal Workers Industrial Union. This union was one of the affiliates of the Trade Union Unity League, the federation of Communist unions in the days when the Communist Party maintained its own trade-union organizations. Lustig publicly endorsed the Communist Party program, and said "Only the Communist Party as the party of the working class represents the interests of the entire working population." (See Daily Worker, November 6, 1933.)

713 Lustig was a delegate to the eighth convention of the Communist Party in 1934, and his convention speech was published in the May-June issue of Party Organizer that year.

Lustig was one of the 144 CIO Communist leaders who hailed the Daily Worker on its twentieth anniversary in 1944. (See the Worker, January 9, 1944.)

Lustig was a sponsor of the seditious American Peace Mobilization, and its meeting of April 5, 1941.

He was also a sponsor of a Communist front organization which was known as the Citizens Emergency Conference for Interracial Unity.

He was a member of the Trade Union Committee to Elect Win-the-War Candidates, a Communist-front organization.

In October 1937, James Lustig and his fellow officers in what was then known as district 12 of the United Electrical and Radio Workers of America urged all their affiliated locals to send delegates to the Pittsburgh congress of the American League Against War and Fascism.

In 1940, Lustig was a member of the Provisional May Day Committee, the Communist group which planned the party's May Day parade and other celebrations. (See Daily Worker, March 23, 1940.)

He was a participant in the Communist Party's April 6 peace rally in 1940. This was one of the nation-wide affairs which led up to the formation of the American Peace Mobilization.

On the occasion of the twenty-fourth anniversary of the Bolshevik Revolution, Lustig hailed the Soviet Union and joined in the Kremlin's cry for "a second front." (See Daily Worker, November 9, 1941.)

As a member of the national board of the Joint Anti-Fascist Refugee Committee Lustig has been convicted of contempt of Congress.

In 1947, the National Council of American-Soviet Friendship called a joint conference against intervention in Greece and Turkey. Lustig was made a member of the continuation committee of the conference. (See Daily Worker, March 19, 1947.) Lustig's participation in this affair was simply one of an endless series of ways in which the leaders of the UERMWA have demonstrated their subservience to the foreign policy of the Kremlin.

Lustig has been a sponsor of the American Russian Institute, a Communist front which disseminates pro-Soviet propaganda.

Walter Mandra, recording secretary, UE Local 1119, Chicago

Walter Mandra sent May Day greetings to the Chicago Star (now renamed the Illinois Standard), the Communist

Party newspaper of Chicago. (See Chicago Star, April 26, 1947.)

Mandra signed the Civil Rights Congress manifesto defending the Communist Party in May 1947. (See the Worker, May 25, 1947.) The Civil Rights Congress was cited as subversive by Attorney General Clark on September 25, 1948.

James E. Marino, field organizer, UE district 2

James E. Marino teaches at the Samuel Adams School for Social Studies, the Communist Party's training school in Boston. This undoubtedly means that he is a member of the Communist Party.

Marino was affiliated with the seditious American Peace Mobilization which carried out the Communist Party "line" in the period of the Stalin-Hitler Pact. According to the Daily Worker (May 2, 1941), James E. Marino was a delegate to the convention of the American Peace Mobilization which was held in New York City on April 6, 1941.

While attending the convention of the American Peace Mobilization, Marino affiliated himself with the Citizens Committee to Free Earl Browder.

Marino was a speaker for the Massachusetts Peace Council, an affiliate of the American Peace Mobilization. (See Daily Worker, June 19, 1941.)

Lemuel Markland, UE international vice president, president, UE district 7, delegate to 1947 and 1948 UE conventions

Lemuel Markland is a member of the National Wallace for President Committee, the outstanding Communist front movement at the present time. (See press release, March 23, 1948.)

Markland signed the Civil Rights Congress manifesto denouncing the recent indictment of 12 national leaders of the Communist Party. (See Daily Worker, September 23, 1948.)

714 *Sidney Mason, business manager, UE Local 547, delegate to 1947 UE convention*

Sidney Mason's record discloses that he is one of the numerous Communists who occupy strategic leadership of the UERMWA.

According to the Daily Worker (June 6, 1946), Sidney Mason is a member of the executive committee of the American Jewish Labor Council. This council is not even thinly veiled as a Communist organization. The majority of its 15 members are well-known members of the Communist Party. With one exception, all of the others are well-known adherents of the Communist Party line in all matters. This single exception is M. Hedley Stone. For years Stone also followed the Communist Party line, but as treasurer of the National Maritime Union he has recently broken with the Communist Party leadership along with NMU's president, Joseph Curran.

Mason was a member of the Citizens Committee to Free Earl Browder. This committee was an auxiliary of the Communist Party, having the objective of securing the release of Earl Browder from the Atlanta Federal prison (see Daily Worker, December 28, 1941).

He was also a sponsor of the Committee for Jewish Writers and Artists. This committee was organized in the summer of 1943 to support the propaganda mission of two Soviet Government agents, Solomon Michoels and Itzik Feffer, who were sent to this country to counteract the adverse effect which the Soviet executions of Ehrlich and Alter, Polish Socialists, occasioned in the United States. The committee sponsored a meeting at the Polo Grounds on July 8, 1943.

Sidney Mason was one of the 144 CIO Communist leaders who publicly hailed the Daily Worker on the occasion of its twentieth anniversary in January 1944. The Daily Worker is the seditious newspaper of the Communist Party.

Mason was also a member of the executive committee of the Brooklyn Non-Partisan Legislative Conference, a Com-

munist-front organization which convened in Brooklyn, N. Y., on Febraury 27, 1944. The chairman of this organization was the pro-Communist clergyman, William Howard Melish. It numbered among the members of its executive committee well-known Communists such as Peter V. Cacchione, Leo J. Linder, and Arthur Osman.

Mason has been a sponsor of the American Russian Institute, a Communist-front propaganda agency.

Mason was a member of the resolutions committee of the 1947 Cleveland national conference of the American Committee for Protection of Foreign Born, an organization cited as subversive by Attorney General Clark.

Dave Mates, district representative, UE district 9, delegate to 1947 and 1948 UE conventions

A number of the veterans of the Abraham Lincoln Brigade who fought in Spain have obtained jobs with the UERMWA. Dave Mates is listed by the State Department as one of those who went to Spain during the civil war in that country. Earl Browder testified before the Special Committee on Un-American Activities that 60 percent of the members of the Abraham Lincoln Brigade were members of the Communist Party.

Ashton Marshall, negotiator, UE Local 475

Ashton Marshall was a delegate to the meeting of the American Peace Mobilization which convened in New York City on April 6, 1941. It will be recalled that the APM was the notorious Communist-front organization which propagandized for the Communist Party line during the period of the Stalin-Hitler pact. It is hardly possible that any of those who participated in the activities and meetings of the APM were unaware of its completely Communist complexion (see Daily Worker, May 2, 1941).

Ashton Marshall signed a petition of the Citizens Committee to Free Earl Browder while he was in attendance, as a delegate, at the meeting of the American Peace Mobilization.

William Mastriana, chief shop steward, UE Local 301, Schenectady, delegate to 1947 and 1948 UE conventions.

William Mastriani has been identified as a member of the Communist Party by Salvatore M. Vottis in sworn testimony before the Committee on Un-American Activities of the House of Representatives (see hearings, July 25, 1947, p. 221). Vottis was financial secretary of the Communist Party in Schenectady for a period of 9 years.

Mastriani signed the Communist Party's nominating petition in 1946.

The position of chief shop steward in local 301 of the UERMWA is of the greatest importance, inasmuch as this local represents some 13,000 members in the highly
715 important General Electric plant in Schenectady, N. Y. The evidence that William Mastriani, who holds this position, is a member of the Communist Party is overwhelming.

Matthew Matison, field organizer, UE district 2

Matthew Irving Matison went to Spain as a member of the Abraham Lincoln Brigade in 1937 at the age of 23. He was another of the members of this Communist-controlled outfit who graduated into the ranks of UE officials.

In keeping with the Communist Party line of the day, Matison participated in a Boston demonstration demanding a second front in 1942 (see Daily Worker, May 7, 1942).

James Matles, UE Director of Organization

Since his retirement from the armed forces in October 1945, the power of James Matles in the UERMWA has grown by leaps and bounds. It is safe to say that neither Albert J. Fitzgerald nor Julius Emspak is a more dominant figure in the affairs of the UERMWA than James Matles. He was a key figure in the union prior to his entering the armed forces of this country.

James Matles, although still a young man, is an old-time Communist. At the age of 24 (in 1933), he had already

attained prominence as a Communist leader in the trade-union field. At that time he was secretary of the Steel and Metal Workers Industrial Union. This latter union was an affiliate of the Trade Union Unity League. In those days the Communist Party had its own federation of trade-unions known as the Trade Union Unity League which was headed by William Z. Foster, national chairman of the Communist Party.

According to the Daily Worker of November 6, 1933, James Matles publicly endorsed the program of the Communist Party.

The best evidence that Matles is a Communist is to be found in the following statement which he signed for release to the press: "Only the Communist Party as the party of the working class represents the interests of the entire working population * * *."

Matles and three of his fellow officers in the UERMWA sent greetings to the American Slav Congress in August 1944. The American Slav Congress is the principal Communist-front organization for persons of Slavic descent in the United States. It has been cited as subversive by Attorney General Clark.

Numerous former Communist Party members are able to identify Matles as a member of the party. He is still an alien, having been born in Hungary and never naturalized.

Edward Matthews, UE international representative, delegate to 1947 UE convention

Edward Matthews is international representative of the United Electrical, Radio, and Machine Workers of America, CIO, in charge of that union's dealings with Westinghouse. That highly responsible position makes it clear that Matthews is one of the key figures in the UERMWA.

Matthews was a member of the National Labor Committee Against War, an affiliate of the seditious American Peace Mobilization.

New significance has been added to affiliation with the American Peace Mobilization by virtue of a recent decision of the United States Supreme Court. One Morton Friedman was dismissed from his Federal job with the War Manpower Commission because he had been affiliated with the APM. Friedman appealed his case to the courts, which sustained the Government. The case was carried to the Supreme Court, which, in the middle of March, 1947, refused to review it, thus, in effect, upholding the verdict of the lower courts.

Matthews has been identified as a member of the Communist Party in sworn testimony before a congressional committee.

William Mauseth, field organizer, UE Local 1146, Minneapolis delegate to 1948 US convention

William Mauseth is a self-declared member of the Communist Party (see New Leader, January 3, 1948).

Mauseth was a speaker for the Communist-controlled Civil Rights Committee in Minneapolis (see Sunday Worker, May 5, 1940).

He was a member of the Minnesota State Committee To Free Earl Browder (see Daily Worker, November 8, 1941).

He was also a signer of the nationally organized Citizens Committee To Free Earl Browder (see Sunday Worker, January 25, 1942).

716 On the twentieth anniversary of the Daily Worker, Mauseth sent his greetings to that newspaper of the Communist Party (see the Worker, January 9, 1944). Mauseth wrote the Daily Worker, as follows: "Please accept my greetings and congratulations upon the twentieth anniversary of your service to the American labor movement. Yours for speedy victory over the enemies of the people."

Mauseth was 1 of the 550 signers of the Civil Rights Congress Manifesto defending the Communist Party (see the Worker, May 25, 1947).

Victoria Mazzie, field organizer, UE local 1225, field organizer, UE Local 475

Victoria Mazzie is a member of the Communist Party. In 1940, she was described as a member of the Young Communist League in an article in the Daily Worker which told of a protest rally in front of the French consulate in New York. Speakers at this Communist Party demonstration included Robert Minor and Peter V. Cacchione (see Daily Worker, April 10, 1940).

Victoria Mazzie was also a candidate for Congress from Brooklyn on the Communist Party ticket (see Daily Worker, August 5, 1940).

Clifford T. McAvoy, UE international representative

Clifford T. McAvoy has been identified as a member of the Communist Party by Salvatore M. Vottis in sworn testimony before the Committee on Un-American Activities of the House of Representatives (see hearings, July 25, 1947).

McAvoy was ousted from his position as deputy welfare commissioner of New York City as a result of charges of communism against him.

McAvoy has long been known as a veteran Communist fellow traveler, even if not a member of the Communist Party. His affiliations with Communist-front organizations include the following:

American Committee for Protection of Foreign Born.
American Society for Cultural Relations with Italy.
Citizens Committee for Harry Bridges.
Citizens Emergency Conference for Interracial Unity.
Committee for Citizenship Rights.
Committee for Equal Justice for Mrs. Recy Taylor.
Council for Pan American Democracy.
National Council of American-Soviet Friendship.
National Federation for Constitutional Liberties.
New York Committee for Protection of Foreign Born.
New York Conference for Inalienable Rights.

New York State Conference on National Unity.
Open Letter for Closer Cooperation with the Soviet Union.
Schappes Defense Committee.
School for Democracy.
Soviet Russia Today.
Statement Defending the Communist Party.
Statement Against United States Policy in Mexico.
Veterans of the Abraham Lincoln Brigade.
Win-the-Peace Conference.

Bernard J. McDonough, president, UE Local 1119, Chicago, delegate to 1947 and 1948 UE conventions

Bernard J. McDonough is unquestionably a member of the Communist Party. This conclusion is based on the fact that he is the president of the People's Publishing Association, the organization which published the Communist Party newspaper in Chicago, the Chicago Star (see Chicago Star, May 15, 1948).

McDonough is candidate for auditor in Illinois on the Progressive Party ticket, the party of Henry A. Wallace and the Communists (see Chicago Star, May 15, 1948).

McDonough signed the Civil Rights Congress manifesto defending the Communist Party (see the Worker, May 25, 1947).

James McLeish, international UE vice president, president, UE district 4, delegate to 1947 and 1948 UE conventions

James McLeish's record of Communist affiliations is such as to mark him definitely as a Communist.

In May 1946, McLeish was a sponsor of a conference, held in Newark, N. J., for the purpose of raising funds for the Communist Party's newspaper, the Daily Worker. This affiliation alone is sufficient to indicate where McLeish's ideological sympathies lie. He was also a member of the Committee to Sponsor the Daily Worker and the Worker 1945 fund campaign. In January 1944,

717 McLeish was one of 144 CIO Communist leaders who publicly hailed the Daily Worker on the occasion of its twentieth anniversary.

McLeish was a participant in the April 6 peace rally (1940) which was staged by the Communists as a part of a nation-wide movement leading up to the formation of the seditious American Peace Mobilization. Always obedient to the line of the Communist Party, McLeish hailed the twenty-fourth anniversary of the Bolshevik Revolution and joined the Kremlin's cry for "a second front." This latter position taken by McLeish was diametrically opposed to his position at the April 6 peace rally.

Under the auspices of the Civil Rights Congress, McLeish signed a public manifesto in defense of the Communist Party (see the Worker, May 25, 1947). The Civil Rights Congress appears on Attorney General Clark's list of subversive organizations.

He was also affiliated with the Citizens Committee to Free Earl Browder. He was a member of the Citizens Nonpartisan Committee for the reelection of Benjamin J. Davis, Jr., to the city council. Davis is a publicity avowed member and leader of the Communist Party.

McLeish was also affiliated with the Committee for Jewish Writers and Artists, a Communist-front organization which staged a pro-Soviet rally at the Polo Grounds, New York City, in 1943.

He was a sponsor of the End Jim Crow in Baseball Committee.

In December 1943, McLeish was a member of the Reichstag Fire Trial Anniversary Committee which was set up to honor Georgi Dimitrov, former head of the Communist International.

Wesley Mitchell, executive board member, UE district council 4, delegate to 1947 and 1948 conventions

Wesley Mitchell sent May Day greetings to the Daily Worker in 1946 when he was a member of the strike com-

mittee at the Phelps-Dodge plant at Elizabeth, N. J. (see Daily Worker, April 28, 1946).

Mitchell signed the Civil Rights Congress manifesto defending the Communist Party (see the Worker, May 25, 1497).

Herbert Morais, UE research assistant, international office

The Rapp-Coudert committee of the New York State Legislature found in 1942 that Herbert Morais, then a member of the faculty of Brooklyn College, was a member of the Communist Party. As a result of his exposure by the Rapp-Coudert committee, Morais was forced out of his position in Brooklyn College. The committee found that Morais used the Communist Party alias "Richard Enmale." The name "Enmale" was derived from the first syllables of the names of Engels, Marx, and Lenin—the three founding fathers of the Communist movement.

Today, Herbert Morais is a member of the faculty of the Jefferson School of Social Science. This is the Communist Party's training school which is on Attorney General Clark's list of subversive organizations.

A few years ago, International Publishers brought out a volume of Jack Hardy which was entitled "The First American Revolution." Jack Hardy's real name is Dale Zysman. Under the latter name, he taught in the New York public schools until his membership in the Communist Party was highlighted by exposures of the Special Committee on Un-American Activities of the House of Representatives and later by the Rapp-Coudert committee of the New York State Legislature. The First American Revolution was a part of the Communist Party's program to rewrite American history according to the theories of communism. Herbert Morais, under the alias of Richard Enmale, wrote the preface to Jack Hardy's First American Revolution.

Herbert Morais was an editor of New Currents. New Currents was the organ of the American Committee of Jewish Writers, Artists and Scientists. It was subsidized

by the Sound View Foundation, repository of Communist Party funds. The Sound View Foundation was headed by three well-known Communists, Alfred Hirsch, Robert W. Dunn, and Joseph R. Brodsky. It dispensed funds to Communist enterprises only. For example on April 20, 1943, it made out a check to the Daily Worker for $1,000.

Morais has written for the Communist Party's New Masses (see issue of June 11, 1946). He has been a contributing editor of the Communist quarterly, Science & Society, and contributed an article entitled "Marx and Engels on America" to the winter 1948 issue of that publication.

Morais' position in the UE organization is one of great strategic importance. He is assistant to James Maties.

718 *Sylvia Muth, member executive Board, UE Local 103, Camden, N. J., delegate to 1947 UE convention*

Sylvia Muth was a delegate to the 1941 convention of the American Peace Mobilization and a signer of the petition of the Citizens Committee to Free Earl Browder, both of which organizations were notoriously controlled by the Communist Party (see Daily Worker, May 2, 1941).

Miss Muth is a member of the small Communist group which controls UE Local 103, the local of the UERMWA which has collective-bargaining relations with the very important Radio Corp. of America at Camden, N. J.

Tom Neill, business agent, UE Local 427, Hoboken, N. J., former executive secretary, UE national veterans committee

At the height of the Communist sabotage strikes in this country during the period of the Stalin-Hitler pact, Tom Neill signed a statement defending the Communist Party which received a full-page spread in the Daily Worker (see Daily Worker, March 5, 1941).

Neill was one of the American delegates to the World Youth Conference held in London, October 31 to November 9, 1945. This gathering was under the complete domina-

tion of Communists from many countries. It set up a new Communist international called the World Federation of Democratic Youth.

Neill signed the Civil Rights Congress manifesto defending the Communist Party (see the Worker, May 25, 1947).

Russell Nixon, UE Washington legislative representative

As early as 1940, Russell Nixon appeared as one of the signers of a petition to Governor Olson of California, to free Sam Darcy. Darcy, whose real name is Dardeck, had been extradited by the State of California from Pennsylvania where he was State chairman of the Communist Party. Darcy was wanted in California for false registration as a voter in 1934. This petition was circulated and published by the National Federation for Constitutional Liberties. This latter organization was cited as subversive by Attorney General Clark. The NFCL was subsequently merged, in the spring of 1946, with the International Labor Defense to form the Civil Rights Congress, also on Attorney General Clark's list.

Came the war, and it was the same old story. In spite of his obvious Communist connections, Nixon was given a commission in the Army. He was released from military service when wires were pulled for his appointment to an extremely important office, namely, that of American member of the German external-property commission, with the assent of the State Department. Although he was the American member of this commission, Nixon listened to his Moscow master's voice and fought furiously for Russian participation in the search for German assets in western Europe. When defeated on this Soviet-inspired front, he resigned with a blast against the State Department, charging, among other things, a plot against Russia. The State Department promptly abandoned diplomacy long enough to call Nixon a liar, in effect.

Immediately on his resignation from his post in Germany, Nixon resumed his job with the UERMWA in Washington, and again became active in Communist-front organizations.

He was a member of the resolutions committee of the Win-the-Peace Conference held in Washington in April 1946. This was the conference where one of the principal Communist fronts of recent years was launched, namely, the National Committee To Win the Peace.

In February 1946, Nixon was the principal speaker at a mass meeting in Washington, D. C., under the auspices of the International Workers Order which the FBI had called one of the largest of the Communist-front organizations.

During the war, Nixon was a principal speaker for the National Wartime Conference of the Professions, the Sciences, the Arts, etc. This, too, was an obvious front of the Communist Party.

Nixon was a speaker at the Communist May Day Rally in Philadelphia in 1946. One of his colleagues on the program was Louis Weinstock, a member of the national committee of a Communist Party (see the Worker, April 28, 1946).

He was a sponsor of a Communist front which called itself the National Conference on the German Problem (see official press release, March 6, 1947).

He was a speaker for the Civil Rights Congress, one of the organizations listed as subversive by Attorney General Clark (see Daily Worker, October 6, 1947).

He was affiliated with the National Council of American-Soviet Friendship, also branded as subversive by Attorney General Clark (see Soviet Russia Today, November 1947).

719 Nixon participated in the National Legislative Conference on Naturalization and Deportation which was held in Washington at the call of the American Committee for Protection of Foreign Born (see the Lamp, January-February 1948).

He has contributed articles to the Communist magazine, Soviet Russia Today, issues of January, March, May, and June, 1948.

He was a speaker in Chicago for the Communist front which called itself the Committee To Defend the Bill of Rights (see Chicago Star, June 5, 1948).

Andrew Overgaard, business agent, UE Local 420

Andrew Overgaard has been a member of the Communist Party for many years.

In 1933, Overgaard publicly declared his support of the Communist Party program along with such UE leaders as James Matles and James Lustig (see Daily Worker, November 6, 1933).

In 1934, Overgaard was secretary of the Trade Union Unity Council, a Communist Party organization headed by William Z. Foster.

Overgaard supported the friends of the Soviet Union. He had gone to Moscow as a delegate to the Red international of labor unions.

Victor Pasche, leader, UE Local 301, Schenectady

Victor Pasche is a member of the editorial committee which publishes the Electrical Union News, official organ of local 301 at the General Electric plant in Schenectady, N. Y.

Pasche has been associated with Communist-front groups for a number of years. In 1940, he was a sponsor of the American Committee for Democracy and Intellectual Freedom when that Communist-front organization was agitating against the Rapp-Coudert investigation into communism in the State-supported schools of New York.

In 1938, considerable publicity centered on the issue of Simon W. Gerson's position as administrative assistant to the borough president of Manhattan. Victor Pasche was one of the Communists and fellow travelers who rushed to the defense of Gerson (see Daily Worker, February 10, 1938).

Henry Phillips, delegate to 1947 UE convention from UE Local 424

Henry Phillips attended a Communist Party training school for UE organizers in February 1938. At the conclusion of the course of study, Phillips and his fellow students (one of whom was Ruth Young) adopted a resolution calling for the building of a more powerful Communist Party looking toward a Communist revolution in the United States.

Ernst Pollock, business agent, UE Local 437, Newark, delegate to 1947 and 1948 UE conventions

Ernst Pollock signed the Civil Rights Congress manifesto defending the Communist Party. (See The Worker, May 25, 1947).

Pollock also signed the Civil Rights Congress statement denouncing the recent indictment of 12 national leaders of the Communist Party. (See Daily Worker, September 23, 1948.)

On September 25, 1948, Attorney General Clark cited the Civil Rights Congress as a subversive organization.

Sol Potegal, business manager, UE Local 427, Bayonne, N. J.

Sol Potegal and his fellow officers of what was then known as District 12 of the United Electrical and Radio Workers endorsed the American League Against War and Fascism in a letter dated October 6, 1937.

Potegal was affiliated with the Citizens Committee To Free Earl Browder. (See Daily Worker, March 16, 1942.)

Potegal sent greetings to the Daily Worker on the occasion of the twentieth anniversary of that Communist Party newspaper. (See The Worker, January 9, 1944.)

James Price, UE international vice president, UE president, District 1, delegate to 1947 and 1948 UE conventions

James Price is a member of the National Wallace-for-President Committee, the outstanding Communist-front movement at the present time. (See press release, March 23, 1948.)

Price sponsored the Communist-controlled United May Day Conference in Philadelphia in 1946. (See Daily Worker, April 4, 1946.)

Price signed the Civil Rights Congress manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

720 *Archie Rappaport, leader, UE District 4*

Archie Rappaport was a student in a Communist Party training school for UE leaders in February 1938. At the conclusion of the course of study Rappaport and his fellow students adopted a resolution calling for a more powerful Communist Party and looking toward a Soviet America.

Rappaport was a delegate to the convention of the American Peace Mobilization in April 1941. At the meeting of this notorious Communist-controlled organization he signed a petition of the Citizens Committee to Free Earl Browder. (See Daily Worker, May 2, 1941.)

Marie J. Reed, business agent, UE local 735, Cleveland, delegate to 1947 and 1948 UE conventions

At the height of the Communist sabotage strikes during the period of the Stalin-Hitler pact in 1941, Marie J. Reed signed a statement in defense of the Communist Party, a statement which received a full-page spread in the Daily Worker. (See Daily Worker, March 5, 1941.)

Under the auspices of the Civil Rights Congress, Miss Reed signed a manifesto defending the Communist Party. (See the Worker, May 25, 1947.)

Henry Rhine, UE international representative, delegate to 1947 and 1948 UE conventions

Henry Rhine works for the UERMWA in the eastern Pennsylvania region or UE District 1. He is a member of the Communist Party.

Late in 1933 Rhine was appointed a junior assistant in the NRA in Washington, D. C. For 6 years he was national organizer of the United Federal Workers of America, CIO. Since 1943 he has been working for the UERMWA in district 1.

Rhine has been a teacher at the Philadelphia School of Social Science and Art, the Communist Party's training school in Philadelphia.

Rhine is prominent in UE negotiations with the important Radio Corp. of America.

Ben Riskin, UE international representative, delegate to 1948 UE convention

Ben Riskin has been a member of the Communist Party for many years. His party membership book, issued for the year 1943, was numbered 37414 and was made out to "R. Burns."

Riskin was the originator of the idea of the portal-to-portal suits.

In 1935 he was an associated editor of the New Order, official organ of the International Workers Order. The IWO is an auxiliary of the Communist Party. An official memorandum of the FBI, dated May 7, 1942, described the International Workers Order as "one of the strongest Communist organizations." The masthead of the New Order for April-May 1935, shows Ben Riskin as one of the magazine's associate editors. The table of contents given on this masthead indicates that Ben Riskin was the author of an article entitled "May 1, 1935." This issue of the New Order was a special May Day issue.

Excerpts from Riskin's article in the New Order read as follows:

"Over one-sixth of the earth has been established a workers' and farmers' land, rising with incredible speed to a state of real general security and comfort, crowned with an ever-growing richness of science and life.

"Like rats in a corner, the bosses with their backs against the wall resort to their last resort—war. They hope to distract the attention of the workers from them to 'foreign foes'—that is, to brother workers, gleefully hoping that the damned nuisances will end the problem of unemployment by killing one another off and make lots of profits for the bosses through munitions and high prices on necessities in the meantime.

"And thus we find our present problems already outlined. * * * They are the fight against imperialist war and thus for the defense of Soviet Russia and Soviet China, the only workers' and farmers' lands."

These quotations clearly reflect Riskin's Communist attitudes toward American industry and leave no doubt whatever that Riskin is a member of the Communist Party.

In 1937 Riskin was on the staff of People's Press, a Communist Party-line publication which was used as the official organ of the UERMWA.

Subsequently People's Press changed its name to Trade Union Service, Inc. The latter is now located at 17 Murray Street, New York, N. Y., and is the publisher of UE News,
official weekly organ of the United Electrical, Radio,
721 and Machine Workers of America. Trade Union Service, Inc., is owned by a group of Communists and fellow travelers which includes Corliss Lamont and Frederick Vanderbilt Field.

Charles Rivers, executive secretary, UE District 3, delegate to 1947 and 1948 UE conventions

Witnesses are available who can testify of their own personal knowledge that Charles Rivers is a member of the Communist Party. Rivers was on the scene in Schenectady in the early days of the organization of UE Local 301 in that General Electric city.

Rivers and his fellow officers of the United Electrical and Radio Workers endorsed the American League Against War and Fascism in a letter dated October 6, 1937.

Rivers signed a petition of the Citizens Committee To Free Earl Browder. (See Daily Worker, November 15, 1941.)

Anthony Salese, president, Local 430, New York City, delegate to 1947 UE convention

Local 430 of the United Electrical, Radio, and Machine Workers of America (CIO) is one of the most important locals in the whole UERMWA, having bargaining representation for 15,000 radio and radio-parts employees in New York City.

According to the Daily Worker of March 5, 1947, Anthony Salese (also known as Tony) was a member of the Provisional May Day Committee.

This committee had charge of all arrangements for the Communist Party's May Day parade and celebrations in New York City. There was no secret whatever about this committee's being the instrument of the Communist Party.

It is clear from the personnel of the Provisional May Day Committee that it was the agent of the Communist Party. Most of he members of the committee are publicly avowed members of he Communist Party. The rest are Communist fellow travelers. Other radicals, such as Socialists, are conspicuous by their absence.

Among the more prominent members of the Communist Party who served with Salese on this committee were the following: Irving Potash, Jack Paley, Sam Burt, Revels Cayton, Albert Kahn, Lewis Weinstock (member of the national committee of the Communist Party), Rockwell Kent (president of the International Workers Order), Bonita Williams, Esther Letz, and Leon Wofsy.

Salese's membership on the Provisional May Day Committee clearly identifies him as a Communist. Whether he holds a Communist Party membership card or not is beside the point.

During the present year, Anthony Salese has served as a member of the Communist-front organization which bears the imposing title of Citizens Committee To Defend Representative Government. The objective of this front is to gain a seat on the New York City Council for Communist Simon W. Gerson.

In February of this year Salese was a sponsor of the National Youth Assembly Against Universal Military Training, a Communist-front organization set up to serve the ends of the Kremlin.

Marcel Scherer, UE representative, District 4 delegate to 1947 US convention

Marcel Scherer is a veteran member of the Communist Party. His membership in the party is established conclusively by the fact that he ran for alderman on the Communist Party ticket in Brooklyn in 1931. (See Daily Worker, November 3, 1931.)

During the First World War, Scherer was dismissed from Erasmus Hall High School in New York for pacifist agitation. He was at that time an active member of the Young People's Socialist League. In 1919, he achieved notoriety as an agitator at the City College of New York.

On September 11, 1939, Benjamin Gitlow, former secretary of the Communist Party, testified under oath concerning Scherer, as follows: "Scherer has held all kinds of positions in the Communist Party. He has held various positions as a section organizer and has been assigned by the executive committee to all kinds of party work; he is one of the oldest and most trusted members of the Communist Party." On October 13, 1939, Maurice Malkin, a former member of the Communist Party, testified before the Special Committee on Un-American Activities concerning Marcel Scherer, as follows: "The leader of that (FAECT) is Marcel Scherer, a charter member of the Communist Party; joined the Communist Party at Williamsburg branch, Brooklyn, 1919."

722 One of the most strategic assignments ever given Scherer by the Communist Party was the national secretaryship of the Friends of the Soviet Union, the Communist-front predecessor of the National Council of American-Soviet Friendship. The FSU maintained a special department for the sending of technological information, industrial and military, to the Soviet Union. This work has been carried on previously, beginning in 1921, by the Society for Technical Aid to Soviet Russia, one of the very first Communist-front organizations in this country which was later merged into the FSU. The Society for Technical Aid to Soviet Russia was set up in this country by A. A. Heller on specific instructions from Moscow. Its purpose was to cultivate and woo American scientists and technicians in the hope that they would provide Soviet Russia with our industrial, scientific, and military secrets and processes. Any information which they were willing to pass on to Russia was sent through the medium of Heller's organization, and later through Marcel Scherer's FSU.

After his work with FSU, Scherer became one of the founders and international vice president of the Federation of Architects, Engineers, Chemists and Technicians (FAECT), an affiliate of the CIO which is now a division of the United Office and Professional Workers of America. The FAECT had many collective-bargaining contracts with the most important defense industries in the United States, including our Navy yards.

Today, Marcel Scherer, UE representative, is an instructor in two Communist Party training schools, the Jefferson School of Social Science and the George Washington Carver School. He has contributed articles to the Communist Party's New Masses, and he has been affiliated with the following Communist-front organizations: American Peace Mobilization, American Relief Ship for Spain, Campus Peace Strikes, Council for Pan-American Democracy, Coordinating Committee to Lift the Embargo, International Labor Defense, and North American Spanish Aid Committee.

(See also testimony of Paul Crouch regarding Marcel Scherer, before the Committee on Un-American Activities, U. S. House of Representatives, May 24, 1949.)

William Sentner, UE international vice president, president UE District 8, delegate to 1947 and 1948 UE conventions

Although one of the highest officials in the UERMWA, William Sentner has never been an electrical, a radio, or a machine worker. He studied architecture in Washington University in St. Louis, but never completed his studies. As an artist, he joined the John Reed Club, a Communist-front organization named after one of the founders of the American Communist Party, and became one of the club's national officers. He also spent some time at sea. In other words, Sentner owes his present strategic union post in a key industry to the operations of the Communist Party's patronage machine and not to any experience or special qualifications in this field of industry.

Sentner was classified as 1-A by his local draft board, but he was given deferment at the request of the UERMWA. Moreover, he was selected as a member of the National War Labor Board for Region No. 7 (Missouri) on February 17, and he was forced to resign on February 10, 1944.

It is unnecessary to prove by documentary evidence that William Sentner is a member of the Communist Party. He admits it. He is proud of it. He has held a number of official positions in the Communist Party since 1934. "When I joined [the Communist Party]," he declared in an interview published in Fortune magazine of November 1943, "I told everybody in town." He told Fortune that he still solicits new Communist Party members, although he devotes most of his time to union activities.

Sentner has been arrested on numerous occasions. In 1938, he was tried and found guilty of criminal syndicalism in connection with the Maytag strike at Newton, Iowa. He was sentenced to 10 years in jail and a fine of $5,000. When the Iowa criminal syndicalism law was found unconstitutional, he was released.

At the present time, Sentner is on the National Wallace-for-President Committee.

Sentner has been affiliated with the following Communist-front organizations:

American League for Peace and Democracy.
Citizens Committee to Free Earl Browder.
Civil Rights Congress.
Committee to Sponsor the Daily Worker and the Worker 1945 Fund Campaign.
Commonwealth College.
International Labor Defense.
723 John Reed Club.
National Federation for Constitutional Liberties.
National Wallace for President Committee.
New Theatre League.
Scottsboro Defense Committee.

Harold Simon, former president, UE Local 1227

Up until 2 years ago, Harold Simon was a leading Communist Party functionary in the UERMWA. The Communist Party then promoted him to position on the New York State secretariat of the Communist Party. While still holding his position as president of UE Local 1227, Simon was a publicly avowed member of the Communist Party.

Simon was a speaker at the founding convention of the Communist Political Association in May 1944.

He had been affiliated with the Greek-American Council, a Communist-front organization which has been renamed the American Council for a Democratic Greece. (See bulletin of the organization, January 1946).

Adam Smith, vice president, UE Local 1119, Chicago

Adam Smith sent greetings to the Chicago Communist Party newspaper, the Chicago Star, for its May Day issue last year. (See Chicago Star, April 26, 1947).

Smith signed the Civil Rights Congress manifesto defending the Communist Party. (See The Worker, May 25, 1947).

Albert Smith, UE international representative, delegate to 1948 UE convention

Albert Smith was a signer of a statement in defense of the Communist Party which received a full-page spread at the height of the Communist sabotage strikes in the spring of 1941, during the period of the Stalin-Hitler pact. (See Daily Worker, March 5, 1941).

In 1942 Smith joined with other pro-Soviet UE leaders in demanding a "second front." This was a subject of considerable Communist Party agitation at the time. (See Daily Worker, July 26, 1942).

Smith signed a petition of the Citizens' Committee to Free Earl Browder. (See Daily Worker, January 25, 1942).

Alice Smith, vice president, UE District 11, delegate to 1947 and 1948 UE conventions

Alice Smith is an instructor in the Abraham Lincoln School, the Communist Party's training school in Chicago, an institution listed as subversive by Attorney General Clark.

She signed the Civil Rights Congress manifesto defending the Communist Party. (See Daily Worker, May 25, 1947).

At the present time she is a member of the national committee of the Progressive Party, the party of Henry A. Wallace and the Communists. (See Chicago Star, July 31, 1948).

Al Stearn, business agent, UE Local 430

Al Stearn was one of the 144 Communist leaders who publicly hailed the Daily Worker (Communist Party newspaper) on the occasion of its twentieth anniversary in January 1944.

It scarcely needs to be said that anyone who sponsors the Communist Party's newspaper, the Daily Worker and the Worker, is actively supporting the cause of communism. It makes little or no difference whether such a sponsor is a card-holding, dues-paying member of the Communist Party.

Stearn signed a statement of Jewish labor-union leaders defending the Soviet Government's execution of the Polish Socialist trade-unionists, Alter and Ehrlich. (See Daily Worker, March 25, 1943).

Under the auspices of the Civil Rights Congress, Stearn signed a manifesto defending the Communist Party. (See The Worker, May 25, 1947).

It is significant that Al Stearn was named chairman of the New York Trade Union Committee for Wallace and Taylor. (See Chicago Star, March 13, 1948).

Albert Stonkus, business agent, UE Local 475

Albert Stonkus was a member of the National Labor Committee Against War, an affiliate of the seditious American Peace Mobilization.

He was a member of the Committee for Jewish Writers and Artists, which defended the Soviet execution of the Polish trade-unionists, Alter and Ehrlich. (See Daily Worker, July 6, 1943).

724 He was also one of the 144 Communist CIO leaders who publicly hailed the Daily Worker on the occasion of its twentieth anniversary in January 1944.

He was a sponsor of the Consumers' National Federation, an organization described as a "transmission belt" by Earl Browder.

The Communist-front affiliations of Albert Stonkus go back more than a decade. He was a delegate to the American League Against War and Fascism, a front cited as subversive by Attorney General Clark last Saturday. (See Daily Worker, August 7, 1947).

Victor Teich, shop chairman, UE local 1227

Victor Teich was a member of the American Student Union's national executive committee, a Communist-front organization which operated in schools and colleges from coast to coast.

Teich publicly declared his support of Israel Amter for Governor of New York in 1942. Amter was the candidate of the Communist Party. (See Daily Worker, October 7, 1942.)

Ernest Thompson, delegate to 1947 UE convention

Ernest Thompson signed a manifesto of Negro leaders against outlawing the Communist Party. All of the signers were persons of substantial Communist-front records. (See press release, April 21, 1947.)

Thompson teaches at the George Washington Carver School, Communist Party training school in Harlem which Attorney General Clark has listed as subversive.

Thompson is a sponsor of the Negro Labor Victory Committee, also listed subversive by the Attorney General. (See letterhead, October 11, 1943.)

He has written for the Communist Party's New Masses. (See New Masses, August 7, 1945.)

He was a sponsor of the Win-the-Peace Conference, a Communist-controlled gathering held in Washington, D. C., in April 1946.

He was a delegate to the Citizens Emergency Conference for Interracial Unity, another Communist-front organization.

He signed a petition of the Citizens Committee to Free Earl Browder. (See Daily Worker, March 16, 1942.)

He signed the Civil Rights Congress statement denouncing the recent indictment of 12 national leaders of the Communist Party. (See Daily Worker, September 23, 1948.)

He is a sponsor of the newest Communist-front organization for Negroes, known as the First Line of Defense. (See the Worker, August 29, 1948.)

Nicholas Tomasetti, UE field organizer, delegate to 1947 and 1948 UE conventions

Nicholas Tomasetti was a signer of a petition of the American Committee for Democracy and Intellectual Freedom, a Communist-front organization.

Tomasetti was a sponsor of the American Peace Mobilization. (See program, April 5, 1941.)

Tomasetti signed a statement in defense of the Communist Party at the height of the Communist sabotage strikes during the period of the Stalin-Hitler pact. (See Daily Worker, March 5, 1941.)

Tomasetti was also affiliated with the Schappes Defense Committee. (See New York Times, October 9, 1944.) Morris Schappes was a Communist Party professor at New York University who had been convicted for perjury.

Jeffrey Van Clief, negotiator, UE Local 430, New York, delegate to 1947 and 1948 UE conventions

Jeffrey Van Clief has been identified as a member of the Communist Party in sworn testimony by James Conroy before the Committee on Un-American Activities of the House of Representatives.

UE Local 430 has bargaining relations with radio and radio-parts manufacturers covering 15,000 employees in New York City.

Philip Van Gelder, UE international representative, delegate to 1947 UE convention

Philip Van Gelder was one of the founders of the Industrial Union of Marine and Shipbuilding Workers of America (CIO). He was its secretary-treasurer until he was inducted into the armed services. When he came out of the Army, his old union defeated him for reelection to his former position in a bitter fight over the issues of communism. Van Gelder was thereupon promptly taken to the arms of the UERMWA as an international representative.

725 Van Gelder was a member of the Communist-controlled National Mooney Council of Action. (See Daily Worker, May 12, 1933.)

Van Gelder is a sponsor of the National Council of American-Soviet Friendship. (See letterhead, May 4, 1948.)

He was a sponsor of the Joint Anti-Fascist Refugee Committee. (See survey of work, March 11, 1942.)

He signed the Civil Rights Congress manifesto defending the Communist Party. (See The Worker, May 25, 1947.)

He also signed the Civil Rights Congress statement denouncing the recent indictment of 12 national leaders of the Communist Party. (See Daily Worker, September 23, 1948.)

Edward Washington, president, Local 1227, New York City, delegate to 1947 and 1948 UE conventions

Local 1227 of the UERMWA claims 3,500 members with contracts in 52 plants in Queens, Manhattan, and Brooklyn.

From a report in the Daily Worker, it is learned that Edward Washington got his job as a milling-machine operator largely through the efforts of the Negro Labor Victory Committee. This committee is a notorious Communist-front organization. (See Daily Worker, December 3, 1946.) It is also apparent that Washington rates very favorable publicity in the Communist Party's Daily Worker. This kind of publicity is usually reserved for the faithful members of the Communist Party.

Edward Washington is a member of the executive board of UE District Council Four. He was also a delegate to the 1947 UE convention and in that capacity, according to the Daily Worker, "helped rout the red-baiters * * *." The Daily Worker also stated that Washington was "proud that 'in our own UE' those who sought to 'discredit Communist unionists' had been defeated." This is sufficient to indicate quite clearly that Edward Washington is wholly on the side of the Communists.

According to the Daily Worker of March 5, 1947, Edward Washington was a member of the Provincial May Day Committee of 1947. This was the committee which made all preparations for the Communist Party's May Day parade and celebrations. Among the well-known Communist Party members on this committee were the following: Irving Potash, Louis Weinstock (member of the national committeee of the Communist Party), Nicholas Carnes, Rockwell Kent, Howard Fast, Joseph Winegrodsky, Audley Moore,

Local 1227 of the UERMWA and its officials have long been identified with the Communist Party. In fact, this local has been one of the most notoriously Communist-controlled units of the UERMWA. It is, therefore, not surprising that it should elect a man with Edward Washington's Communist record as its president.

The Daily Worker's reference to Washington as a "church leader" was just so much typical Communist double-talk.

Under the auspices of the Civil Rights Congress, a Communist front on Attorney General Clark's list of subsersives, Edward Washington signed a manifesto in defense of the Communist Party. (See the Worker, May 25, 1947.)

All of the foregoing constitutes cumulative evidence which leaves no doubt that Edward Washington is a Communist.

Robert Whisart, member, UE General Executive Board, secretary-treasurer, UE District 11

Robert Whisart was affiliated with the Citizens Committee to Free Earl Browder. (See Sunday Worker, January 25, 1942.)

Whisart sent greetings to the Daily Worker on the occasion of its twentieth anniversary. (See the Worker, January 9, 1944.)

Whisart was a signer of a petition of the National Federation for Constitutional Liberties in January 1943.

Tom Wright, managing editor, UE News

Tom Wright was a delegate to the convention of the American Peace Mobilization in April 1941. (See Daily Worker, May 2, 1941.)

At the convention of the APM, Wright signed a petition of the Citizens Committee to Free Earl Browder.

726 *Jack Young, secretary-treasurer, UE Local 1143, Minneapolis*

Jack Young was a member of the Minnesota State Committee to Free Earl Browder. (See Daily Worker, November 8, 1941.)

Young also signed a petition of the Citizens Committee to Free Earl Browder. (See Sunday Worker, January 25, 1942.)

Young signed a petition of the National Federation for Constitutional Liberties in January 1943.

Ruth Young, executive secretary, UE District 4, member, UE general executive board, delegate to 1947 and 1948 UE conventions

Ruth Young's married name is Mrs. Irving C. Velson, and, as such, she is a member of the New York State committee of the Communist Party. She occupies one of the most strategic positions in the UERMWA. Miss Young has been an avowed member of the Communist Party for many years.

Her Communist-front affiliations include the following:

(1) American Youth Congress—member of presiding committee of the New York State Model Legislature of Youth, January 28-30, 1938.

(2) Civil Rights Congress—signer of manifesto. (See The Worker, May 25, 1947.)

(3) Committee for Equal Justice for Mrs. Recy Taylor—sponsor.

(4) Committee to Sponsor the Daily Worker and the Worker 1945 Fund Campaign—member.

(5) Congress of American Women—vice chairman. (See The Worker, June 23, 1946.)

(6) International Women's Day—signer of greetings to the Soviet Union. (See Sunday Worker, March 8, 1942.)

(7) Jefferson School of Social Science—member of the board of trustees.

(8) National Council of American-Soviet Friendship—sponsor of the Committee of Women. (See Daily Worker, February 10, 1944.)

(9) National Wallace-for-President Committee—member. (See press release, March 23, 1948.)

(10) Schappes Defense Committee—sponsor. (See Daily Worker, October 18, 1941.)

(11) School for Democracy—lecturer. (See Daily Worker, January 21, 1942.)

(12) World Youth Congress—delegate.

Ruth Young was one of the speakers at the CIO Political Action Committee's New York conference of January 14-15, 1944. In February 1938, she signed a manifesto of the Young Communist League which read, in part, as follows: "Forward to build a strong and powerful Communist Party! Forward to the American October!"

The reference to "October" is to the Bolshevik Revolution of Russia. When Ruth Young was confronted at the 1941 convention of her union with the fact that she had signed this manifesto, she made no denial.

Perez Zagorin, UE international field organizer

There is overwhelming evidence that Perez Zagorin is a Communist.

Zagorin is an instructor in the Jefferson School of Social Science, the Communist Party's training school for Communist organizers, propagandists, and agitators.

Zagorin was affiliated with the Citizens Committee of the Upper West Side. This was a Communist-front organization which received extraordinary publicity in the Daily Worker. This committee was cited as subversive by At-

torney General Clark on September 25, 1948. (See Daily Worker, July 4, 1943.)

He is also affiliated with the Communist-front organization which is known as the People's Radio Foundation, also listed as subversive by Attorney General Clark.

On the occasion of the twentieth anniversary of the Communist Party's Daily Worker, Perez Zagorin was one of a large group of Communist leaders in the CIO who publicly hailed that seditious newspaper.

In December 1943, a Communist-front organization was set up to honor the former head of the Communist International, Georgi Dimitrov. Perez Zagorin was a member of this committee which was known as the Reichstag Fire Trial Anniversary Committee. (See New York Times, December 22, 1943.)

Zagorin has written for the Communist quarterly magazine, Science and Society. (See issues of summer 1945 and spring 1948.

727 *Jack S. Zucker, UE organizer, District 1, Baltimore*

For a number of years, Jack Zucker was national legislative representative of the United Shoe Workers of America (CIO), with headquarters in Washington, D. C. Both of the CIO unions, with which Zucker had been connected, are among the most clearly Communist-dominated in the entire CIO.

For many years Zucker has been known as a Communist. His public affiliations give substantial support to his reputation as a Communist. He has been affiliated with the following Communist-front organizations:

American Peace Mobilization.
Citizens Committee to Free Earl Browder.
Civil Rights Congress.
National Federation for Constitutional Liberties.
National Negro Congress.
Washington CIO Committee to Reinstate Helen Miller.
Washington Peace Mobilization.

Zucker was an active delegate to the American Peace Mobilization in New York April 5, 1941. This fact was established in sworn testimony before the Special Committee on Un-American Activities of the House of Representatives on May 21, 1941. This testimony established the fact that Zucker was a member of a "lobby committee" from Washington, D. C., at the meeting of the American Peace Mobilization in New York City.

At the meeting of the American Peace Mobilization, Zucker signed a petition of the Citizens Committee to Free Earl Browder. This petition and its list of signers were published in the Daily Worker of May 2, 1941.

In May 1947, Zucker signed a manifesto defending the Communist Party, under the auspices of the Civil Rights Congress. (See The Worker, May 25, 1947.) Last week, he was a member of a nine-man delegation to the White House, bearing a statement denouncing the recent indictment of 12 national Communist Party leaders. The statement was reported to have been signed by 1,100 labor union leaders, and was issued under the auspices of the Civil Rights Congress, an organization listed as subversive by Attorney General Clark. (See Daily Worker, September 23, 1948.)

[Stipulation Attachment No. 5 is printed above as Emspak Exhibit No. 13 at pp. 68-85.]

[Stipulation Attachment No. 6 is printed above as Emspak Exhibit No. 10 at pp. 57-60.]

745 **Stipulation Attachment No. 7**

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF NONCOMMUNIST UNION OFFICER

(See instructions on reverse)

The undersigned, being duly sworn, deposes and says:

1. I am a responsible officer of the union named below.

2. I am not a member of the Communist Party or affiliated with such party.

3. I do not believe in, and I am not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

.....
(Full name of union, including local name and number)

.....
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature .....
Address .....
(Street)
.....
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this ..... day of ..... 19.... A notary public or other person authorized by law to administer oaths and take acknowledgments in and for the county of ....., State of ..... My commission expires .....

.....
(Signature)

[SEAL]

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the criminal code, which provides that any person willfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

[Stipulation Attachment No. 8 is printed above as Emspak Exhibit No. 3 at pp. 41-42.]

[Stipulation Attachment No. 9 is printed above as Emspak Exhibit No. 2 at pp. 39-40.]

[fol. 352] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,943

JULIUS EMSPAK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Before: Stephens, Chief Judge, Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy, and Washington, Circuit Judges, in Chambers

ORDER—Filed March 26, 1952

It is ordered by the Court sua sponte that the above-entitled case be, and it is hereby, set for rehearing in banc on such date as the business of the Court will permit.

Per Curiam.

[File endorsement omitted.]

[fol. 353] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,943

JULIUS EMSPAK, Appellant

v.

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the District of Columbia

Decided December 19, 1952

Mr. David Scribner, *pro hac vice*, by special leave of the court, with whom Mr. Allen Rosenberg was on the brief, for appellant.

Mr. Charles B. Murray, Assistant United States Attorney at the time of the argument, with whom Mr. George Morris

Fay, United States Attorney at the time the brief was filed, was on the brief, for appellee. Messrs. Charles M. Ireland, United States Attorney at the time of argument, and Joseph M. Howard, Assistant United States Attorney, also entered appearances on behalf of appellee.

Before Stephens, Chief Judge, and Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy and Washington, Circuit Judges.

OPINION—Filed December 19, 1952

CLARK, Circuit Judge:

This appeal was first heard by a division of this court but subsequently, before a decision and opinion had been announced, the court, *sua sponte*, ordered rehearing *in banc*. [fol. 354] Appellant was indicted by a grand jury, tried without jury, and convicted of violating Section 192, Title 2, U. S. Code.[1] He was sentenced to imprisonment for a period of six months and to pay a fine of $500.00. This appeal follows.

In response to subpoena, appellant appeared before a one-man subcommittee of the Committee on Un-American Activities of the House of Representatives. The committee was investigating the general subject of infiltration of Communism into labor unions. During the course of the hearing, appellant was asked approximately two hundred thirty-nine questions, most of which he answered, but

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[1] The statute reads as follows: "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months. As amended June 22, 1938, ch. 594, 52 Stat. 942."

there were sixty-eight questions which he refused to answer Appellant contends that at the time of his refusal to answ those questions, he asserted the privilege against se incrimination under the Fifth Amendment. In additi he advances certain other arguments which we will consi before addressing ourselves to an examination of the marks and events which took place at the hearing.

One argument advanced by appellant is that the low court erred in denying a hearing on appellant's moti challenging validity of the grand jury which indicted him The affidavits which he submitted to support his motion for hearing had as their sole basis the argument that govern- [fol. 355] ment employees on the grand jury were incapable of reaching an unbiased decision, and they did no more than assert existence of a "miasma of fear" so clearly rejected in the *Dennis* case. Without more, there was no ground upon which an order for hearing might be founded, and there was no error in the denial thereof. The Supreme Court has held that the mere fact of government employment does not result in an implication of bias on the part of a juror, and does not disqualify an individual from jury service. *United States* v. *Wood*, 299 U.S. 123, 57 S. Ct. 177 (1936); *Frazier* v. *United States*, 335 U.S. 497, 69 S. Ct. 201 (1948); *Dennis* v. *United States*, 339 U.S. 162, 70 S. Ct. 519 (1949).

As for appellant's contention that the prosecution failed to prove a material ingredient of the offense—a valid subcommittee—there is no justification whatsoever. The validity of the House Committee on Un-American Activities has been the subject of exhaustive examination and certainly by now conclusive determination. See *Josephson* v. *United States*, 165 F. 2d 82 (2nd Cir., 1947), *cert. denied* 333 U.S. 838, 68 S. Ct. 609 (1948); *Barsky* v. *United States*, 83 U.S. App. D.C. 127, 167 F. 2d 241, *cert. denied* 334 U.S. 843, 68 S. Ct. 1511 (1948); *Eisler* v. *United States*, 83 U.S. App. D.C. 315, 170 F. 2d 273 (1948); *Dennis* v. *United States*, 84 U.S. App. D.C. 31, 171 F. 2d 986 (1948), *aff'd.* 339 U.S. 162, 70 S. Ct. 519 (1950). The committee is authorized as a whole or by subcommittee to make investigations. 60 Stat. 812, 828. Appellant appeared before the subcommittee in response to subpoena and the record discloses that on the call to order the chairman identified the sub-

committee and recited the authority under which it was constituted. Appellant was present, accompanied by counsel. He heard the announcements of the chairman, and he made no objection to the chairman's sitting as a subcommittee of one. Not only is it clear from the record that the subcommittee was valid, the appellant may not now advance [fol. 356] an objection to it. In the *Bryan* case the Supreme Court was called upon to consider the failure of a recalcitrant witness to express at time of hearing any objection to the composition of the committee, and in its opinion the Court said: "To deny the committee the opportunity to consider the objection or remedy it is in itself a contempt of its authority and an obstruction of its processes." *United States* v. *Bryan*, 339 U.S. 323, 333, 70 S. Ct. 724, 731 (1950).

In his brief and in oral argument on appeal, appellant sought to remove himself from the operation of the statute by claiming that there could have been no contempt until after a question had been asked by the subcommittee, reply had been refused, and thereafter specific direction that the question be answered, with still another refusal. In other words, he argued that failure to answer the questions of the Congressional subcommittee was not of itself contempt, but rather that contempt would arise from refusal to comply with a specific Congressional order to answer. We cannot agree with appellant's proposition that there is an analogy between a committee of Congress and a grand jury. The grand jury is an appendage of the court, 24 Am. Jur., Grand Jury, §2, dependent upon the court to punish contumacious witnesses, whereas the contempt power of Congress is implied to both Houses from the inherent nature of the Congress, and "Congress was only implementing a conceded power when it enacted the statute providing punishment for contempt of [its] committees." See *Fields* v. *United States*, 82 U.S. App. D.C. 354, 356-357, 164 F. 2d 97, 99-100 (1947), *cert. denied* 332 U.S. 851, 68 S. Ct. 355 (1948). Any crime of contempt was complete when appellant refused to answer questions propounded by the subcommittee. *United States* ex rel., *Cunningham* v. *Mathues*, 50 F. 2d 411 (3rd Cir., 1930).

The Supreme Court has said that "The offense of contempt of Congress . . . matures only when the witness is

[fol. 357] called to appear before the committee to answer questions or produce documents and wilfully fails to do so." See *United States* v. *Bryan*, *supra*, at p. 341. But that does not mean that the witness appears before a committee of the Congress deprived of his legal rights or shorn of his constitutional privileges. A person summoned to appear before a Congressional committee may refuse to answer questions and submit to a court the correctness of his judgment in doing so, but a mistake of law is no defense, for he is bound rightly to construe the statute involved. *Townsend* v. *United States*, 68 U.S. App. D.C. 223, 95 F. 2d 352, *cert. denied* 303 U.S. 664, 58 S. Ct. 830 (1938).

This brings us to the primary argument advanced by appellant in this appeal. He has argued that at the time of his refusal to answer the questions of the sub-committee he asserted the privilege against self-incrimination under the Fifth Amendment.

The record discloses that appellant is an experienced, intelligent, and articulate individual who holds high executive position in a large labor union and who also serves as editor of the union's official publication. He was accompanied at the hearing by able and experienced counsel. His testimony shows him to be a man of strong opinions and clear and vigorous expression. These elements leave no doubt of his ability to say what he might mean, and, conversely, to mean what he might say.

At the start of the hearing, appellant answered questions concerning the union and its organization, officials and functions. He also answered later questions concerning access of union officers to defense plants. But when asked to identify certain persons, he lashed out at the committee, condemning its conduct in the past, and impugning its motives. Rather than draw about him the protecting mantle of the Fifth Amendment, in his sole reference to the Constitution the appellant stated: "Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amend-[fol. 358] ment, supplemented by the fifth. This committee will corrupt those rights." Later, on being asked if he felt answers to certain questions would subject him to criminal prosecution, he not only replied in the negative, but

he also added: "I don't think this committee has a right to pry into my associations. That is my position."

This court is well aware that the provisions of the Fifth Amendment must be accorded liberal construction in favor of the right it was intended to secure. *Hoffman* v. *United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 818 (1951), and cases there cited. We are also aware that no magic formula of words must be precisely recited, as though a talisman, to assure the protection which the Amendment was intended to provide. However, there is no analogy between this situation and the circumstances involved in the *Hoffman* case, for in that case it was stipulated that the petitioner had declined to answer on the ground that his answers might tend to incriminate him of a federal offense, whereas the very question to be decided here is whether or not appellant adequately invoked the privilege. We find that he did not.

Affirmed.

PRETTYMAN, *Circuit Judge*, with whom STEPHENS, *Chief Judge*, and WASHINGTON, *Circuit Judge*, concur, concurring: The rule invoked by appellant in respect to the grand jury, as stated by him in his brief, is: "It is now settled that Government employees serving as Grand or Petit Jurors will be barred as a group for bias when circumstances are brought to the court's attention demonstrating that Government employees would not be suitable jurors in a particular case. *Dennis* v. *United States*, 339 U.S. 162." His reference to the *Dennis* case is actually a reference to the language used by Mr. Justice Reed in his concurring opinion. We assume for present purposes that the [fol. 359] concurring opinion is an accurate summation of the opinion of the Court. Under the rule as thus stated the question before us is whether circumstances were brought to the trial court's attention which demonstrated that Government employees would not be suitable grand jurors in the particular case.

This case rests upon an indictment which charges that the appellant refused to answer sixty-eight questions asked him by, or on behalf of, a subcommittee of a committee of the House of Representatives. Fifty-eight of those ques-

tions were whether appellant knew certain named persons and whether those persons were officials or representatives of a named labor organization; two were whether appellant had been affiliated with the National Federation for Constitutional Liberties and the Civil Rights Congress; and the remaining eight were whether the defendant had attended meetings of, was a member of, had paid dues to, etc., the Communist Party. Appellant's motion to dismiss the indictment and for other appropriate relief was upon twelve grounds, one of which related to the grand jury and was as follows:

> "10. The indictment is void and illegal in that there are less than 12 members of the Grand Jury which voted the indictment who were impartial and free from prejudice or bias against the defendant, and therefore as to this defendant the alleged Grand Jury was illegally constituted. The indictment should be dismissed or in the alternative the defendant should be granted a hearing at which he can offer proof that bias or prejudice existed on the part of more than 11 of the Grand Jurors."

Attached to the motion was an affidavit of appellant, in which he said that with respect to the questions referred to in the indictment he asserted his constitutional privilege against self-incrimination as well as his rights under the First Amendment. Also attached to the motion were two affidavits of counsel for the appellant, to the second of which [fol. 360] eight exhibits were attached, which affidavits and exhibits were alleged to show that due to the Loyalty Order and investigations being made pursuant thereto "a miasma of fear" had developed among Government employees in the District of Columbia which caused such employees to come reasonably to the conclusion that any action by them which could be considered sympathetic toward a person accused of an offense arising out of an investigation of Communist activities would endanger their Government employment.

Thus the circumstances brought to the court's attention included the fact that appellant was charged before the grand jury and in the indictment with refusing to answer

questions, and the fact that he in effect admitted that he had refused to answer the questions but asserted as a defense a legal justification for the refusal. Our legal procedure does not include provision for the presentation to a grand jury of matters of defense or justification. The problem before the trial court upon the motion to dismiss the indictment or for a hearing, therefore, did not present the question whether Government employees were suitable jurors to consider the validity of the claim to the privilege. The question was whether Government employees were suitable grand jurors to consider the charge that appellant had refused to answer certain questions. In respect to that charge the court was advised by the affidavit attached to the motion that the appellant had refused to answer the questions. Therefore the problem before the court was whether under these particular circumstances a general atmosphere of fear on the part of Government employees made them unsuitable grand jurors in respect to such charge in the light of statements made by appellant in the motion.

The ruling of the trial court was:

> "4. In the absence of a showing of actual bias on the part of the members of the Grand Jury due to their employment in the Government of the United States [fol. 361] or the Government of the District of Columbia, the indictment is not void. *United States* v. *Wood*, (1936) 299 U.S. 123; *Frazier* v. *United States*, (1948) 335 U.S. 497; *Dennis v. United States*, (1950) 339 U.S. 162. In a particular case Government employees serving as Grand or Petit Jurors might be barred for implied bias when circumstances are properly brought to the Court's attention which convince the Court that Government employees would not be suitable jurors. No such circumstances are present under the force of the present motion to dismiss, nor were any such circumstances indicated in defendant's proffer of proof in support of the motion for a hearing on the qualifications of the Grand Jurors."

We think that ruling was correct. We are here dealing with a grand jury, not a petit jury. No question was pre-

sented as to the constitution of the grand jury as such, or as to its ability to act upon other cases. No claim was made that any grand juror was biased against this appellant personally. We think that under the circumstances presented to the court there was no indication that Government employees would not be suitable grand jurors in respect of the charge which was before them in this particular case. The question before the court was limited to the suitability of this grand jury to act in this particular case. Other cases and other circumstances might present other problems.

We assume for the purposes of this opinion that an accused is entitled to an impartial grand jury, taking "impartiality" in this context to mean absence of bias in respect to the accused as a person and absence of bias in respect of the particular matter at hand. To state an exaggerated example: We suppose no one would contend that Government employees are unsuitable grand jurors in respect to a charge of armed robbery, even if the accused happened to be a Communist.

We repeat for emphasis that among the circumstances brought to the court's attention upon the motion were [fol. 362] (1) the fact that the charge before the grand jury was that appellant refused to answer certain questions and (2) the fact that appellant said that he had refused to answer those questions. Helpful, although not decisive, is the rule long ago stated by the Supreme Court, that "for such irregularities as do not prejudice the defendant he has no cause of complaint, and can take no exception."[1] This grand jury was not called upon to evaluate the probabilities of a doubtful *prima facie* case of a charge in a realm of opinion or controversy. And the court knew when it considered the motion that the appellant did not deny the basic fact of refusal but advanced a defense of justification. The function of the grand jury is merely to determine

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[1]Agnew v. United States, 165 U.S. 36, 41 L.Ed. 624, 17 S.Ct. 235 (1897). See also Medley v. United States, 81 U.S. App. D.C. 85, 155 F.2d 857 (1946), *cert. denied*, 328 U.S. 873, 90 L.Ed. 1642, 66 S.Ct. 1377 (1946); Romney v. United States, 83 U.S. App. D.C. 150, 167 F.2d 521 (1948) *cert. denied*, 334 U.S. 847, 92 L.Ed. 1771, 68 S. Ct. 1512 (1948).

whether the evidence before it, if unexplained, would justify a verdict of guilty. This grand jury did no more than to say in effect that appellant should be put to his defense. No circumstance was brought to the court's attention which demonstrated that this grand jury was unsuitable to take that action.

In respect to the applicable requirements upon a witness's refusal to answer a question, we add one further observation in view of the decision and opinion in No. 11081, *Quinn* v. *United States*, decided today. We there remand; we here affirm. But we remand there because the trial court erroneously, we think, held specifically that the defense offered by Quinn was not available to him as a matter of law. Reversal upon that ruling required a new trial. We made further observations designed to be helpful upon the trial thus required. In the present case there was no corresponding ruling of law. There was a general judgment of guilty by the judge without a jury. Our review [fol. 363] upon the point is limited to a determination whether the record contains sufficient evidence to support a finding that Emspak deliberately and intentionally refused to answer and thus to support that judgment. We find that it does. The evidence is ample that Emspak was made well aware that the Subcommittee desired answers to its questions despite the grounds he advanced for refusing. Hence we affirm. The point is discussed a little more at length in No. 11045, *Bart* v. *United States*, also decided today.

FAHY, *Circuit Judge*, concurring in part, dissenting in part: I concur with respect to the grand jury question and the validity of the subcommittee, but would grant a new trial so that the trier of the facts may apply the principles laid down today in No. 11081, *Quinn* v. *United States*.

BAZELTON, *Circuit Judge*, with whom EDGERTON, *Circuit Judge*, concurs, dissenting: The court affirms the ruling below that appellant did not invoke the privilege against self-incrimination under the Fifth Amendment. I do not reach that issue because, as the record shows, appellant did state some grounds,[1] not plainly frivolous, for his objection

[1] He at least claimed protection of First Amendment rights and lack of pertinency. J.A., p. 168.

to answering. Under the view I expressed in *Bart* and *Quinn*, there could be no valid conviction unless the trial court found "from all the circumstances that (1) the witness was clearly apprised * * * whether the grounds for his objection to answering were accepted or rejected, and that (2) if rejected, he was given another opportunity to answer."[2] Although Judge Clark's opinion alludes to this problem, it neither meets nor discusses it.[3]

[fol. 364] By agreeing with the Subcommittee chairman that appellant's "conduct disclosed a flagrant attitude toward the committee,"[4] the trial court did not avoid the necessity for determining whether or not the witness had been "clearly apprised." Concededly the record reveals matters which might be said to reflect an adverse ruling by the Committee on the appellant's objections.[5] But these matters are not conclusive. And we should not on appeal invoke our judgment to resolve a factual conflict on an essential element of the crime—namely, intent to violate the statute.[6] That is the function, in the first instance, of the court below. Since I am not convinced from an examination of the entire record that the court below, sitting without a jury, took the correct view of the governing principles, I would reverse for a new trial.

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[2] Quinn v. United States, — U.S.App.D.C. —, — F.2d —, slip opinion, p. 25.

[3] Slip opinion, p. 4.

[4] J.A., p. 226.

[5] The indictment charges appellant with refusing to answer 68 questions in as many counts. After appellant stated the grounds for his objection to answering the question involved in Count 1, the following occurred:

"Mr. Tavenner [Committee counsel]. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

"Mr. Moulder [Subcommittee chairman]. The record will reveal that you have not answered the question." *Hearings before the Committee on Un-American Activities*, 81st Cong., 1st Sess. 839-40 (1949).

[6] 11 STAT. 155 (1857), as amended, 52 STAT. 942 (1938) 2 U.S.C. § 192 (1946).

I would reverse and remand for an additional reason. The trial court erred in denying appellant's request for a hearing in connection with his attempt to show that Government employees were disqualified as grand jurors in this particular case. I have set forth the reasons for this view in *Quinn* v. *United States*,[7] decided today, where the same issue arose under identical circumstances.

[File endorsement omitted.]

[fol. 365-366] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,943

JULIUS EMSPAK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the District of Columbia.

Before: Stephens, Chief Judge, and Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy, and Washington, Circuit Judges

JUDGMENT—Filed December 19, 1952

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Circuit Judge Clark.

Dated: December 19, 1952.

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[7] — U.S.App.D.C. —, — F.2d —.

Separate concurring opinion by Circuit Judge Prettyman, with whom Chief Judge Stephens and Circuit Judge Washington, concur.

Separate opinion by Circuit Judge Fahy, concurring in part and dissenting in part.

Dissenting opinion by Circuit Judge Bazelon, with whom Circuit Judge Edgerton concurs.

[File endorsement omitted.]

[fol. 367] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

PETITION FOR REHEARING—Filed January 3, 1953

To the Honorable Judges of the United States Court of Appeals for the District of Columbia Circuit en banc:

Appellant respectfully petitions this Court for a rehearing of its decision and opinions of December 19, 1952 affirming the judgment of conviction of the District Court in this proceeding.

I

Statement

This appeal was originally argued before a Division of this Court on October 5, 1951. Several months thereafter this Court, *sua sponte*, ordered the appeal set for reargument before the Court *en banc*. Argument was heard pursuant to this order. On December 19, this Court sitting *en banc* filed its opinions, three judges affirming, three judges concurring, one judge concurring in part and dissenting in part, and two judges dissenting.

[fol. 368] We do not propose in this petition for rehearing to reargue or restate the fundamental issues which have been argued in full before the Court *en banc* and which have been before this Court for its consideration

for many months. We will address ourselves in this petition primarily to certain problems suggested by the concurring opinions of Judges Prettyman, Washington and Stephens, which require we believe further argument and rehearing by the Court.

II

The concurring opinions of Judges Prettyman, Washington and Chief Judge Stephens require a rehearing on the issue of the denial of appellant's motion for a hearing on the challenge to the validity of the Grand Jury.

As a threshold issue in this appeal, as well as in the companion *Quinn* case, appellant has argued that the lower court erred in denying a hearing on appellant's motion challenging the validity of the grand jury which indicted him.

Judges Clark, Miller and Proctor have held that the offer of proof submitted by appellant "did no more than assert existence of a 'miasma of fear' so clearly rejected in the *Dennis* case" (Opinion, p. 3). These Judges conclude that "without more, there was no ground upon which an order for hearing might be founded and there was no error in the denial thereof" (Opinion, p. 3). We wish to point out that no reading of the *Dennis* case, majority or concurring opinion, can support an assumption that the Supreme Court there "clearly rejected" an asserted existence of a "miasma of fear". The *Dennis* majority, let alone the concurring opinion of Mr. Justice Reed, clearly states:

> "As far as it appears, the court was willing to consider any evidence which would indicate that investigatory agencies of the Government had recognized in the past or would take cognizance in the future of a vote of acquittal, but no such proof was made. [fol. 369] Nor was there evidence of a climate of opinion among Government employees that they would jeopardize their tenure or provide investigation by such a verdict."

Appellant specifically and in detail offered to prove the very propositions which the Supreme Court set forth in the *Dennis* majority. Refusal to permit the appellant to adduce such evidence is in complete conflict with *Dennis*.

The concurring Judges Prettyman, Washington and Chief Judge Stephens do not read the *Dennis* case as do Judges Clark, Miller and Proctor. These members of the Court assume for the purposes of this case that the concurring opinion of Mr. Justice Reed in *Dennis* is "an accurate summation of the opinion of the Court" and summarize the rule of *Dennis* in the following manner: "The question before us is whether circumstances were brought to the trial court's attention which demonstrated that government employees would not be suitable grand jurors in the particular case."

The concurring Judges therefore have not rejected appellant's contention that the rule of *Dennis* permits the defendant in a criminal proceeding to challenge the indicting grand jury by offering evidence tending to show that a "miasma of fear" had "developed among government employees in the District of Columbia which caused such employees to come reasonably to the conclusion that any action by them which could be considered sympathetic toward the person accused of offenses arising out of the investigation of Communist activities would endanger their government employment" (Opinion, p. 8). The concurring Judges we wish to emphasize do not hold that appellant's offer of proof is insufficient in law. To the contrary, they indicate that such an offer might be sufficient in "other cases and other circumstances" (Opinion, p. 9).

The concurring members of the Court base their affirmance here on the assumption that in this particular case there was no area of discretion for the grand jury. They emphasize that the following circumstances were "brought to the Court's attention" upon the motion:

> [fol. 370] "1. The fact that the charge before the Grand Jury was that appellant refused to answer certain questions, and (2) the fact that appellant said he had refused to answer this question" (Opinion, p. 10).

These Judges conclude, as a result of these two circumstances, that this grand jury was not called upon to evaluate the probabilities of a "doubtful *prima facie* case or of a charge in the realm of opinion or controversy" (Opinion,

p. 10). The concurring Judges conclude that since the only contested issue before the grand jury was the claim of constitutional privilege and that since this was a matter of "defense of justification" (Opinion, p. 10), the grand jury could do nothing under these circumstances except indict.

We suggest that this conclusion of Judges Prettyman, Washington and Chief Judge Stephens joined in by Judge Fahy in his concurring in part, dissenting in part opinion * is in conflict with their own opinions in *Quinn* v. *United States*, decided concurrently.

In *Quinn*, Judges Prettyman, Washington and Chief Judge Stephens hold that "the deliberate and intentional character of the refusal is an element of the offense to be determined from all the circumstances by the trier of the facts" (Quinn opinion, p. 9) and point out in amplification that "to constitute an offense, refusal to answer must be intentional" and that "it must appear that [defendant] was aware of the intention of his inquirer that the answers were required despite his objections" (Quinn opinion, pp. 9, 10). We assume, for the purposes of this petition, that the discussion of Judges Prettyman, Washington and Chief Judge Stephens represents the opinion of the Court on the question of "direction." To hold that a "*prima facie*" case of violation of the statute is present, a grand jury must therefore consider whether it appears from the evidence that the witness "was aware of the intention of his inquirer that answers were required despite his objections." This Court now holds that this is not a matter of "defense of justification", but rather "*an element of the offense.*" [fol. 371] Thus this is an issue which the grand jury would have had to consider in deciding whether there was a "*prima facie*" case of violation of statute.*

* See also Judge Fahy's concurrence in *Quinn*.

* This is not an issue which the defendant ever conceded in any affidavits or statements to the trial court on the motion challenging the grand jury. We do not understand that the Court assumes any such concessions. Quite to the contrary, the record clearly reveals that the appellant has consistently urged from the beginning of the proceeding that in fact he was not made aware of "the intention of his inquirer that answers were required despite his objections."

We suggest therefore, that the opinion of Judges Prettyman, Washington and Chief Judge Stephens on the decisive issue of the "deliberate and intentional character of the refusal" as an element of the offense indicates on its face that there was in fact an area of discretion before the grand jury. The grand jury might have concluded on the basis of the record that the appellant was not "aware of the intention of his inquirer that answers were required despite his objections". That this was a reasonably possible conclusion for an impartial trier to arrive at is evidenced by the remand in *Quinn* which instructs the trial court to consider this very point.

We urge therefore, that Judges Prettyman, Washington and Chief Judge Stephens, in light of their own opinion in this case and in *Quinn*, consider a rehearing and re-argument on this issue. If awareness of the intention of the inquirer that answers were required despite objections is a material ingredient of the offense, appellant was entitled in justice and fairness to the deliberations of an impartial grand jury on this issue. We suggest therefore to the Court that re-argument and rehearing should be granted on this point.

III

The opinion of the concurring Judges on the issue of "direction" requires the granting of the petition for a rehearing.

We suggest that the opinion of Judges Prettyman, Washington and Chief Judge Stephens in *Quinn*, decided concur- [fol. 372] rently with this case concerning the applicable rule to be followed by the District Court on retrial on the issue of "direction" requires a rehearing and reconsideration of the decision in *Emspak*. In *Quinn*, Judges Prettyman, Washington and Chief Judge Stephens held that "to constitute an offense, refusal to answer must be intentional" and that "it must appear that the [witness] was aware of the intention of his inquirer that answers were required despite his objections" (Quinn opinion, p. 9). These Judges conclude that "the deliberate and intentional character of the refusal is an element of the offense to be determined from all the circumstances by the trier of the facts" (Quinn opinion, p. 10). We suggest, that this rule of law laid

down in remanding *Quinn* requires a rehearing of the decision in *Emspak* and in particular a reconsideration of the question by the concurring members of the Court.

An examination of the record of the proceedings in *Emspak* reveals that the trial judge in no way considered or applied this guiding rule of law. The opinion of the trial judge demonstrates beyond any doubt that the trial judge did not apply this rule. The trial judge was under the impression that a mere refusal to answer was sufficient to constitute an offense under the statute. The trial judge did not inquire as to whether it appeared that the appellant "was aware of the intention of his inquirer that answers were required despite his objections." We do not understand how a "general verdict of guilty" erases the obligation of this Court to remand with instructions to apply the correct rule of law.

The opinion of the trial judge in enunciating the principles which he has followed in arriving at the verdict of guilty should not be disregarded by this Court. If the trial had been by jury, the instructions of the judge would have required reversal and remand on this issue. Since the trial was without jury, the opinion of the judge stands as his own expressions of the principles which guided him in arriving at the verdict. While in this opinion the trial [fol. 373] judge made a series of findings on what he considered to be the essential ingredients of the offense, he did *not* make a finding that the appellant "was aware of the intention of his inquirer that answers were required despite his objections." The issue is not whether there is any evidence in the record which could have supported such a finding by the trial judge. The fact of the matter is that the trial judge made no such finding; he never considered the issue. Appellant is entitled, as this Court points out in *Quinn*, to a trial on all of the material elements of the offense by the trier of the facts and not by an appellate court. And he must be acquitted by the trier of the facts unless *all* the material elements are found against him beyond a reasonable doubt.

We suggest, therefore, that the concurring Judges should reconsider their refusal to remand in *Emspak* on this issue in light of the failure of the trial judge to apply the proper rule of law as laid down by this Court in *Quinn*. The ques-

tion as to whether there is sufficient evidence in the record to support a finding by the trial court is pertinent only when the trial court applies the correct principles of law and makes the initial finding. The fact of the matter is that this trial court never even considered the question. It should therefore be determined, as this Court points out in *Quinn*, as a matter of first instance by the trier of the facts.*

[fol. 374] Conclusion

Appellant respectfully submits that the petition for rehearing should be granted.

David Scribner, 11 East 51st Street, New York 22, N. Y. Allan R. Rosenberg, 10 Tremont Street, Boston 8, Mass., Attorneys for Appellant.

Of Counsel: David Scribner, Donner, Kinoy & Perlin, by Arthur Kinoy.

Dated: January 2, 1953.

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* We suggest that the observations of Judges Prettyman, Washington and Chief Judge Stephens in *Quinn* are particularly appropriate on this issue in Emspak:

> "But when a defendant waives trial by jury he does not thereby consent to a determination of his guilt or innocence by an appellate court. * * * Were this court to affirm the conviction on a finding not considered below, the defendant would in effect be deprived of that right [right of appeal], for our finding, in the first instance, on the main issue, would be subject to review only on the grant of *certiorari* by the Supreme Court" (Quinn opinion, p. 9).

[fol. 375] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Before Stephens, Chief Judge, and Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy, and Washington, Circuit Judges, in Chambers.

ORDER—Filed April 13, 1953

Upon consideration of applicant's petition for a rehearing en banc herein, it is

Ordered by the Court that said petition be, and it is hereby, denied.

Per Curiam.

Chief Judge Stephens did not participate in the foregoing action.

[fol. 376] Designation of record (omitted in printing).

[fols. 377-378] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 379] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 67

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 12, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, except as to question No. 4 presented by the petition for the writ.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

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HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

No. ~~746~~ 9

JULIUS EMSPAK,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 796

JULIUS EMSPAK,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

JULIUS EMSPAK, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered on the 19th day of December, 1952 (R.365) affirming petitioner's judgment of conviction in the United States District Court for the District of Columbia.

Opinions Below

The opinion of the Court of Appeals (R.363-64) has not yet been reported. The opinions of Judge Kirkland denying certain pre-trial motions made by petitioner and 15 other individuals who were indicted for contempt of Congress appear at 95 F. Supp. 1010 and 1012. The opinion of Judge Letts (R. 224-227) rendered at the conclusion of the trial and holding the petitioner guilty is unreported.

Jurisdiction

The judgment of the Court of Appeals was entered on December 19, 1952. A petition for rehearing was denied on April 13, 1953. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

Statutes, Resolutions and Rules Involved

1. 2 U. S. C. § 192; R. S. § 103, as amended June 27, 1938, c. 594, 52 Stat. 942.

> *Refusal of witness to testify.* Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

2. H. Res. 5, 79th Cong., 1st Sess., 91 Cong. Rec. 10, 15 (January 3, 1945).

> Resolved, That the rules of the Seventy-eighth Congress be, and they are hereby, adopted as the rules of the Seventy-ninth Congress.
>
> That rule X of the Rules of the House of Representatives is amended by adding after clause 40a of the first paragraph a new clause to read as follows:
>
> '40b. On Un-American Activities, to consist of nine members.'

Rule XI of the Rules of the House of Representatives is amended by adding after clause 40a two new clauses to read as follows:

'40b. To Un-American Activities—to the Committee on Un-American Activities.

'40c. The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

'The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

'For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the Committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.'

3. Rules of Criminal Procedure:

Rule 6. The Grand Jury.

(b) OBJECTIONS TO GRAND JURY AND TO GRAND JURORS.

(2) *Motion to Dismiss.* A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections.

(b) THE MOTION RAISING DEFENSES AND OBJECTIONS.

(1) *Defenses and Objections Which May Be Raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections Which Must Be Raised.* Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) *Time of Making Motion.* The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

(4) *Hearing on Motion.* A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be tried by a jury if a jury trial is required under the Constitution or an act of Congress. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

Summary Statement of the Matter Involved

Petitioner, Julius Emspak, is the General Secretary-Treasurer of the United Electrical, Radio and Machine Workers of America (R. 160), hereafter referred to as UE or the Union, a national labor union representing employees in the electrical, radio and machine industry. He appeared on December 5, 1949 before a one-man Subcommittee of the Committee on Un-American Activities of the House of Representatives consisting of Representative Morgan M. Moulder (R. 159, 239).

During the course of the hearings petitioner was asked approximately 239 questions. These questions dealt with the position of the witness, his background, the structure of the Union, the extent of its membership and bargaining commitments, the number of its organizers, the manner of their appointment, the composition of the Executive Board, the number of the Union's international representatives and their duties, the duties of the Union's Executive Committee, the manner in which grievances are adjusted, the official publication of the Union, the alleged similarity in policy between the Union publication and the Communist

Party, the signing by the witness of a non-Communist affidavit which was filed with the National Labor Relations Board, and related matters. The witness answered all of these questions fully and frankly (R. 159-199).

Included within the 239 questions which the witness was asked were a series of approximately 68 questions which are set out in counts 1-68 of the indictment for violation of Section 192, Title II, U. S. C. which was returned against petitioner by a grand jury empaneled on October 3, 1950 (R. 4-13).

Of these 68 questions some 58 sought from the witness information as to the identity of and his acquaintance with certain named individuals. Two counts in the indictment (counts 59 and 60) were based upon the witness' refusal to answer questions concerning his affiliation with two organizations, the National Federation of Constitutional Liberties and the Civil Rights Congress (R. 12). The remaining counts in the indictment (61-68) are based upon the witness' refusal to answer certain questions with respect to his alleged membership in the Communist Party (R. 12-13).

At the outset of the series of questions which gave rise to the indictment petitioner, when asked to identify a particular individual, stated as his reason for declining to answer (R. 168):

> "Because of the hysteria, I think it my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth."

Thereafter, in response to similar questions, he referred back to this answer.

When it became apparent that he would be asked a series of questions requiring him to identify various Union officials, he amplified his original answer by stating (R. 171):

> "Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it

was announced because this committee presumably was interested in finding out things with reference to individuals in our oganization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

"I don't see how or why an individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee. I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up."

The press reports referred to by the witness in the above-quoted explanation deal with statements attributed to the House Committee on Un-American Activities to the effect that the Committee decided to investigate the non-Communist affidavits which the Union officers had previously filed pursuant to the Taft-Hartley Act (R. 39-42).

Petitioner was asked shortly after giving the above answer whether it was his feeling that to reveal his knowledge of others would subject him to criminal prosecution and he replied (R. 172):

"No. I don't think this committee has a right to pry into my associations."

All of the petitioner's subsequent answers which form the basis of the indictment were justified for the reasons which he had previously given. At the conclusion of the hearing the witness was told by the Sub-Committee chairman that he had not been "accused of anything" (R. 191).

On December 17, 1950, petitioner filed a motion to dismiss the indictment and for other appropriate relief upon the grounds, *inter alia*, that the indictment violated the constitutional privilege against self-incrimination contained in the Fifth Amendment to the Constitution (R. 14-17).

The motion further sought dismissal of the indictment, or in the alternative a hearing, on the ground that there were less than 12 members of the Grand Jury which voted the indictment who were impartial and free from prejudice and bias against the defendant.

Petitioner attached to the motion a series of affidavits dealing both with the claim of privilege as well as with the contention that the Grand Jury was illegally constituted. Thereafter, petitioner filed a supplementary affidavit attacking the qualifications of the grand jurors (R. 85).

On January 19, 1951, Judge Kirkland granted the Government's motion to strike certain of the affidavits and attached exhibits dealing only with the claim of privilege upon the ground that they were not appropriate to be considered in connection with pre-trial motions. On the same day Judge Kirkland, apparently *sua sponte,* struck as legally insufficient petitioner's supplementary affidavit on the qualifications of the grand jurors (R. 115-116). Thereafter petitioner made an offer of proof of the allegations of fact set forth in the affidavits theretofore filed on the qualifications of the grand jurors (R. 235-236).

On January 26, 1951, Judge Kirkland handed down an order and opinion holding, *inter alia,* that neither the circumstances recited in the motion to dismiss nor those referred to in the offer of proof with respect to the qualifications of the Grand Jury justified granting the relief requested by petitioner (R. 116; 95 Fed. Supp. 1010).

Thereafter, on January 31, 1951, Judge Kirkland filed a second opinion holding that the counts involved in the instant indictment, as well as several others with which he dealt simultaneously, "apparently on their face were directed to one single line of inquiry which was a specific phase of inquiry then being considered by the Committee" (R. 119; 95 Fed. Supp. 1012).

After a trial without a jury before Judge Letts, the petitioner was found guilty of contempt as charged and sentenced to imprisonment for a period of six months and a fine of $500 (R. 233).

After an appeal was argued in October 1951 before the judges of the lower court, reargument was *sua sponte* ordered before the court *en banc*. After reargument in May, 1952, the Court of Appeals on December 19, 1952, handed down its opinions. The opinion of the court was written by Judge Clark for himself and judges Miller and Proctor. A concurring opinion was written by Judge Prettyman for himself and Judges Stephens and Washington. Judge Bazelon dissented for himself and Judge Edgerton while Judge Fahy concurred in part and dissented in part.*

Questions Presented

1. Whether petitioner asserted the Fifth Amendment privilege against self-incrimination in response to certain questions put to him by a Subcommittee of the House Committee on Un-American Activities.

2. Whether a witness before a Congressional committee must be specifically directed to answer by the Committee before he can be held in violation of Title 2, Section 192.

3. The court below refused to rule that a witness must be specifically directed to answer before he can be held in default, but apparently did rule that such a witness must be apprised in some fashion that the Committee intends that he should answer despite his objections; this requirement fixes the deliberate and intentional character of the refusal and is an element of the offense. Two questions are presented by this ruling:

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* Some of the issues were further discussed in *Quinn* v. *U. S.*, and *Bart* v. *U. S.*, cases in which review is also being sought in this Court.

(a) Whether a new trial should have been granted and the case remanded so that the trier of the facts might apply the principles laid down in the opinion.

(b) Whether, if it was appropriate in a criminal case to rule on this issue for the first time on appeal, the court below was in error in finding that petitioner was made aware of the intention of the Subcommittee that he answer despite the grounds he advanced for refusing.

4. Of the twenty members of the indicting Grand Jury, ten were Government employees and, in addition, two were wives of Government employees. A question is presented as to whether a motion for a hearing to investigate the qualifications of the Grand Jury was improperly denied in the face of a detailed offer of proof and affidavits showing the existence of a climate of opinion among Government employees that they would jeopardize their tenure or provoke investigation by failing to indict petitioner at the Government's request.

5. Whether House Resolution 5, as construed and applied herein, abridged the petitioner's freedom of speech, press and assembly in violation of the First Amendment to the Constitution.

6. Whether the First Amendment protects a witness before a Congressional committee against the compulsory disclosure of the identity of trade union officials with whom he is associated and of his political views and affiliations.

Reasons for Granting the Writ

1. Since almost all indictments for contempt of Congressional committees are brought in the District of Columbia the rulings of the lower court with respect to the questions presented here will inevitably exert an influence far beyond the confines of this case. The lower court's

rulings decide important questions of substance with respect to the construction of the Constitution which have not been but which should be settled by this Court. Questions with respect to the conduct of Congressional committees and the rights and obligations of witnesses before such committees have acquired increasing importance in recent times. The systematic use of the investigative process against individuals as such rather than for the purpose of obtaining information for legislative purposes has brought into focus a host of important problems which must be authoritatively settled by this Court.

2. This Court has never dealt with the question concerning the form and manner in which the privilege against self-incrimination must be expressed in order to give protection to the individual pleading the privilege before a congressional committee. The circumstances relevant to a disposition of this issue in this case are the following.

The petitioner as well as his Union and its other officers had for a long time been accused by congressional committees and in particular the House Committee on Un-American Activities of Communism and of affiliation with Communist organizations (R. 241-245).

The hearings which resulted in the indictment of the petitioner as well as the indictment of the petitioner in No. 795, this Term, were frankly labeled hearings regarding "Communist infiltration". They contain detailed testimony charging petitioner and a great number of other Union officials with Communism or affiliation with Communist organizations (R. 246, 276-350).

Almost all of the individuals referred to in Counts 1-58 of the indictment had been, prior to the hearing at which petitioner was interrogated, listed as Communists or as affiliated with Communist organizations in publications of the House Committee on Un-American Activities and the House Labor Committee (R. 68-85, 246-248).

In addition, the organizations which are referred to in Counts 59 and 60 of the indictment had been the subject of similar charges (R. 250-251).

On October 14, 1949 petitioner had signed and filed NLRB Form 1081, "Affidavit of Non-Communist Officers" in which petitioner swore (R. 350-351):

> "The undersigned, being duly sworn, deposes and says I am the responsible officer of the Union named below. I am not a member of the Communist Party or affiliated with such party. I do not believe in and I am not a member of nor do I support any organization that believes in or teaches the overthrow of the United States Government by force or any illegal or unconstitutional method."

The vast incriminating scope of this oath need hardly be emphasized in view of the False Claims Act (18 U. S. C. 1001) to which the affidavit on its face specifically calls attention (R. 351). It need only be pointed out that it greatly exceeds in scope even the Smith Act which does not reach such matters as "belief" or "support". And while the Smith Act is addressed only to force and violence, this provision embraces "any illegal or unconstitutional method" of overthrowing the Government.

After the filing of the affidavit by petitioner and prior to his appearance before the Committee, the General Counsel of the National Labor Relations Board referred the affidavit to the Department of Justice for investigation as to whether it presented a violation of Federal laws (R. 254).

Several weeks before petitioner's appearance before the Committee a newspaper announced that, according to a spokesman for the Committee, the purpose of the inquiry was an investigation into the affidavit which petitioner had signed (R. 253, 39-40).

Less than a week after this statement concerning the purpose of the subpoena appeared in the daily press, an

article appeared stating that the Department of Justice was preparing "for speedy action on some cases referred to it * * * involving union officials who have signed non-Communist affidavits under the Taft-Hartley Law". The news item referred specifically to petitioner. It stated that he had filed a non-Communist affidavit, that the House Committee had listed petitioner as a Communist and that petitioner was to appear before the Committee the following week (R. 41-42). In the course of the hearing petitioner was expressly questioned concerning his affidavit (R. 194).

To all this need be added only the fact that petitioner had been identified as a Communist by Louis Budenz * in the course of the trial which had resulted in the conviction of the 11 Communist leaders (R. 57-60, 253-254; *Dennis* v. *U. S.*, 339 U. S. 162).**

These objective circumstances establish the peril of prosecution to which the questioning exposed petitioner. More relevantly this setting of extreme peril both broadened the witness' latitude as to the manner and form of his assertion and obviated the necessity for more explicit formulation by the witness to the Committee of the reasons for his answers. Compare *United States* v. *Skinner*, 218 Fed. 870, 880. See also *United States* v. *Elton*, 222 Fed. 428 (S. D. N. Y.) and *United States* v. *Eisele*, 52 Fed. Supp. 105 (D. C. Dist. Col.).

3. At the very first indication on the part of the Committee that the witness' answers might involve association with specific individuals charged with being Communists,

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* Budenz had also so identified petitioner in Congressional hearings. It was largely upon the basis of the testimony of Budenz that legislative justification was found for the affidavit provisions of the Taft-Hartley Act. See *CIO* v. *Douds*, 339 U. S. 382, footnote 4.

** It is hardly surprising that on the floor of Congress members of the committee frankly conceded the incriminating character of the questions (R. 251-52).

petitioner asserted and claimed his privilege under the Fifth Amendment. Thus the witness specifically stated (R. 168):

> "Because of the hysteria, I think it my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the Fifth Amendment supplemented by the Fifth Amendment. This committee will corrupt those rights."

He explained to the Committee that the line of questioning that "counsel was developing now has been used on numerous occasions by this Committee and other Congressional Committees in the attempt to harass the Union, its leadership and its members."

The court below based its ruling that the privilege had not been asserted (and indeed the trial court as well (R. 225)) upon these preliminary responses alone. We believe that these responses are sufficient to assert the privilege.

4. The petitioner, however, did not confine his responses to the answer quoted above. He made it explicit when the Committee continued to press him that the reasons for his refusal were based upon his fear that an attempt was being made, as press reports had predicted, to elicit information to be used in a criminal prosecution against him (R. 171):

> "Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this Committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal and for the purpose of trying to frame people for possible criminal prosecution."

This claim of protection under the Fifth Amendment based upon a fear of a "possible criminal prosecution" was again repeated when counsel for the Committee in accordance with the Committee's announced purpose of inves-

tigating the validity of the affidavit which petitioner had submitted under the Taft-Hartley Act pressed the witness on this subject. He stated (R. 194): "I further understand what the motives of this committee are, to establish a beautiful frame to hang people who try to comply with the law."

Throughout the entire course of the questioning the petitioner consistently referred back to his original claim of protection under the Fifth Amendment. When petitioner responded with "I answered that", at one point when an incriminating question was put to him, Congressman Moulder said: "You mean you refuse to answer for the same reasons you gave at the beginning." The defendant replied: "That is correct; I answered the best way I know how" (R. 194).

Thus the witness' entire testimony is unified by a claim of protection under the Fifth Amendment based upon the stated fear that his answers might be used against him in a "possible criminal prosecution".

5. The decisions of this Court have insisted upon the fundamental importance of the privilege against self-incrimination under our constitutional system. See *Blau* v. *U. S.*, 340 U. S. 159; *Blau* v. *U. S.*, 340 U. S. 333; *Hoffman* v. *U. S.*, 341 U. S. 479; *U. S.* v. *White*, 322 U. S. 694, 698; *Feldman* v. *U. S.*, 322 U. S. 487, 489; *Twining* v. *U. S.*, 211 U. S. 78, 91. The court below did not give the Fifth Amendment a "liberal construction in favor of the right it was intended to secure" as the *Hoffman* case requires. It withheld a liberal construction from petitioner's assertion, apparently on the ground that the *Hoffman* case did not involve a contested assertion.

6. Because the incriminating area embraced petitioner's political views and affiliations, it is neither surprising nor hostile to his assertion of the plea of the privilege against self-incrimination that the witness referred not only to the

Fifth Amendment but to the First Amendment. There is a close relationship between the reasons which brought the privilege against self-incrimination into being and the nature of the rights protected by the First Amendment. See *Wood* v. *U. S.*, 128 F. 2d 265, 268, 278, 279 (C. A. D. C.), and *U. S.* v. *St. Pierre*, 152 F. 2d 837, 842. And apart from this the law is clear that reliance upon reasons in addition to possible self-incrimination cannot serve to dissolve the protection of the Fifth Amendment. Compare the *St. Pierre* case, *supra*, where a witness, when asked why he refused to answer a question, stated: "It was 95% fear of revenge and 5% fear of self-incrimination". The Court of Appeals held that this circumstance did not operate to deprive the witness of the privilege.

7. In a number of companion cases involving officers or members of the Union, trial courts ruled that reliance upon comparable expressions constituted valid assertions of the privilege against self-incrimination.

One such case is *U. S.* v. *Fitzpatrick*, Criminal No. 1743-1950, 96 F. Supp. 491, involving Thomas J. Fitzpatrick, the chief steward of Local 601 of the Union.

Mr. Fitzpatrick appeared before the same committee as that which found petitioner in contempt, the Un-American Activities Committee. See Petition in *Quinn* v. *United States*, No. 795, this Term. After preliminary matters had been disposed of, Mr. Fitzpatrick stated his position in advance with respect to questions which the Committee thereafter might ask (at p. 602): *

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* For the convenience of the Court we have appended below two supplements to this brief. Supplement I is a series of unreported opinions involving the privilege against self-incrimination which were handed down by the District Court in a number of companion cases. Supplement II reproduces parallel testimony of union officers before the House Un-American Activities Committee. Relevant portions of the remainder of the Fitzpatrick testimony are set forth in Supplement II at p. 29.

"I will answer all honest questions put to me, but I have no intention of joining with the people who seek to destroy the Constitution of this country, whether witnesses or anybody else. To me, the Constitution of this country is not a scrap of paper. It is something to be maintained. I have two sons. I want them to have the same freedoms and rights that I have enjoyed. If I can't leave this world a better world, I want to leave it just as good.

"The Constitution of this country provides certain protection for minorities and gives the privilege for people to speak and think as they felt that they should and want to. It gives the privilege that people can have opinions or beliefs that may be unpopular. In my opinion, it gives them the right to hold those opinions secret, if they so desire. This is a protection of the first amendment to the Constitution, supplemented by the fifth amendment."

In his opinion in the *Fitzpatrick* case, 96 F. Supp. 491, Judge Morris refused to permit the fact that the witness relied upon considerations in addition to those arising out of the Fifth Amendment to cancel the claim of privilege. He stated that "* * * this misapprehension (with respect to the applicability of the First Amendment) on the part of the defendant in no way vitiates his right to the protection under the Fifth Amendment if he sufficiently made such claim". The court's analysis with respect to the sufficiency of the claim is, we submit, wholly dispositive of the issue which is here in focus. The court stated (at 493):

"The Fifth Amendment to the Constitution provides, among other things, that 'no person * * * shall be compelled in any criminal case to be a witness against himself * * *.' The other provisions of that Amendment obviously have no relation to this controversy, and the provision mentioned is the one that has been construed to justify a witness in any proceeding in declining to answer any question that would tend to incriminate him, or expose him to prosecution for the crime. There can be no doubt that this protection extends to a witness testifying before any judicial, congressional or administrative body of the United States Government, although, apparently, there has been misapprehension

> on the part of some that it does not. The use, therefore, by the defendant of the term 'Fifth Amendment' could only have reference to this provision therein, and unless by some explicit statement that he was not claiming the protection of that provision of the Constitution, it would seem sufficient to put the Committee on notice that he was asserting such claim."

Judge Morris insisted (*ibid.*) that the manner of the assertion cannot be divorced from the objective circumstances:

> "* * * Where a witness, such as the defendant here, has claimed the protection of the Fifth Amendment, and that in a setting in which he has been denounced, by other witnesses testifying, as a communist, where testimony by other witnesses, if believed, shows that he has been active in organizing and directing a communist organization (that is, the Union), where the statutes then in force make it a criminal offense to do such things, and where prosecutions have been instituted against those who are charged with doing them, it seems to me to be clear that the Committee was put on ample notice that the defendant apprehended that the answers to the questions involved in this indictment would furnish information which could be used in the prosecution of him in a criminal case under existing federal statutes, and for that reason, as well as for other reasons which were not well founded, declined to answer the questions. *Blau* v. *United States,* 340 U. S. 159."

The circumstances which the court thus described as conveying reasonable notice that Fitzpatrick, a shop steward of a local union of the UE, claimed the privilege applies even more appositely to the situation of petitioner, the Secretary-Treasurer of the International Union, who had been repeatedly denounced as a Communist by other witnesses before the Committee and officially by the Committee itself.*

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* In the case of petitioner there is, as we have noted, an additional and special set of circumstances, even more favorable to his assertion, which arose out of the investigation of his affidavit under the Taft-Hartley Act.

In *U. S.* v. *Panzino*, Criminal No. 1747-1950, Supplement I, p. 1, Judge Goldsborough ruled that a similar formulation constituted an effective assertion of the privilege against self-incrimination. Likewise in *U. S.* v. *Matles*, Criminal No. 1745-50, Supp. I, p. 11, Judge Letts who was the trial judge in the instant case found reliance upon the First and Fifth Amendments to constitute a valid assertion of the privilege against self-incrimination.*

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* The court reached this conclusion by probing "the mental operations of Representative Moulder". Judge Letts stated that the primary question was whether Representative Moulder understood the defendant's reference to the Fifth Amendment and further whether such reference adequately conveyed to the Representative that the defendant was invoking his constitutional privilege against self-incrimination. In order to justify the acquittal in the *Matles* case, in the face of the conviction here, Judge Letts ruled that, though the language used by the witness was inadequate to convey an assertion, Representative Moulder nevertheless managed to grasp that an assertion had been made. In reaching this conclusion, Judge Letts pointed to the fact Representative Moulder, upon being told that the witness relied on the First and Fifth Amendments (Supplement I, p. 13),

> "then inquired 'In what respects do they justify your refusal to answer the question'. And the defendant replied: 'I am so advised by counsel.' At this point Mr. Scribner, counsel for the defendant, who was present, volunteered: 'I will be happy to give the basis for that if you wish, Mr. Congressman'."

The court concluded upon the basis of the above colloquy that since "the suggestion of defendant's counsel was not adopted and he was not invited to explain further the position of the defendant in relying upon the First and Fifth Amendments", therefore, "Representative Moulder understood the position of the defendant and the purpose of the objections that had been made."

But this is the same Representative who only a little while earlier had heard petitioner, the witness immediately preceding Matles, use almost the same language to claim privilege. If he was aware that the words "First and Fifth Amendments" constituted an assertion, he must have had a similar awareness when the witness Emspak used the expression "the First Amendment supplemented by the Fifth."

The inescapable fact is that the words which the witness Matles used, in the context of the objective circumstances, were adequate to convey the assertion and that similar words and circumstances require the same conclusion here. There is no basis whatsoever

8. The court below in reaching the conclusion that the petitioner had failed to assert the privilege after adverting to the fact that he referred to the "First Amendment, supplemented by the Fifth" stated:

> "Later, on being asked if he felt answers to certain questions would subject him to criminal prosecution, he not only replied in the negative, but he also added: 'I don't think this committee has a right to pry into my associations. That is my position.'"

But the court could not attribute to this answer a significance which dominates and indeed overrides the remainder of the witness' testimony and its context. As we have noted Judge Kirkland had ruled that all of the questions addressed to the petitioner were parts of a single line of inquiry. If the questions addressed to petitioner cannot be considered in isolation from the entire inquiry, neither may the answers. An analysis of the entire line of inquiry establishes that petitioner asserted the privilege and that Representative Moulder was aware that the privilege was being claimed.

Thus, when the witness asserted his privilege in response to an incriminating question with respect to Joseph Persily, he was asked precisely the same kind of question with respect to another Union organizer, Albert Smith. Although the witness referred back to his earlier answer in declining to answer the question concerning Smith, he was nevertheless asked whether Max Helford had ever been connected with the UE as a field organizer. It was in response to this third attempt to incriminate him that the

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for attributing to Representative Moulder a comprehension of what was being claimed in the *Matles* case and an ignorance of what was being claimed in the *Emspak* case. Indeed the record in this case contains a more explicit indication than is presented by the *Matles* record, that Representative Moulder knew that the witness had claimed his privilege. See R. 191.

witness made explicit the basis for his claim of privilege, namely the fear of criminal prosecution for perjury.

When the pattern of the questioning revealed that petitioner was being asked to identify individuals who had been accused by the Committee of being Communists, he charged that all of the questions which had been put by the chairman were motivated by the Committee's purpose to identify individuals as Communists for possible criminal prosecution under the affidavit provisions of the Taft-Hartley Act. He suggested that the questions bore out the press reports which have already been referred to and which announced that such would be the purpose of the interrogation. He stated his refusal to permit himself thus to be victimized: "I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up."

Although the witness thus expressly stated the basis for his claim of privilege and of his fear, Representative Moulder persisted in arguing with the witness in an obvious attempt to force out of him the incriminating information which the Committee sought. It was in response to the attempt to probe further into the basis for the claim that the witness gave a negative reply upon which the Government relies.

Before the witness left the stand, Representative Moulder stated to him that he had "not been denied any constitutional rights or privileges" and that he had not been accused of "anything". Representative Moulder thus sought to reassure the witness that his fears were groundless and that his constitutional rights to be free of self-incrimination had not been invaded. The Subcommittee thus patently recognized that the witness had asserted the privilege and that he had not abandoned it, for if the Subcommittee was under the impression that the witness had

not relied upon the privilege, it would hardly have become necessary to tell him that he had not been accused of anything.

A significant series of questions terminated the line of inquiry. The witness was bluntly asked whether he had recently signed a non-Communist affidavit with the NLRB, and was thereafter asked whether he was a member of the Communist Party. In response to this apparent attempt to lay the basis for a perjury charge against the witness, the witness communicated in unmistakable language his fear that the inquiry was designed to lay the basis for a perjury prosecution.

Despite this clearly communicated expression of fear, the Committee, pursuing its earlier tactics of attempting to wring admissions from the witness in the face of an assertion of the privilege, nevertheless asked him whether he was a member of the Communist Party at any time before he signed the affidavit, whether he ever paid Communist Party dues, whether he ever signed an application to join the Communist Party, whether he ever registered as a member of the Communist Party, and whether he ever attended the trial of Earl Browder at the Communist Party headquarters in New York City. To all of these questions the witness simply replied: "I answered that". When the Subcommittee asked: "You mean you refused to answer for the same reasons you gave at the beginning?" the witness replied: "That is correct. I answered the best way I know how." Thus, the witness concluded his examination by a reliance upon the same assertion which he made when the Committee first touched upon the incriminating subject-matter.

When petitioner's responses are considered together as an integrated response to a single line of inquiry, there cannot be any question that he explained the phrase, "First Amendment, supplemented by the Fifth Amendment" to mean a claim of the privilege based upon the fear of being "framed" "for possible criminal prosecution". He used

this expression on two occasions to convey the fear that his answer would be used to lay the basis for a perjury prosecution under Section 9(h) of the Taft-Hartley Act. The court below therefore fell into serious error in dealing with petitioner's answer to a single question in isolation. When the ultimate facts were sought to be elicited, the petitioner plainly expressed his fear of prosecution. It was these questions which were put to petitioner which establish the purpose of the entire inquiry, namely, his associations and membership in the Communist Party. The answers to those questions plainly convey a fear of prosecution and constituted an adequate assertion of the privilege against self-incrimination with respect to the entire line of inquiry.

9. The court below wholly overlooked the fact that the question in response to which the petitioner stated that he did not fear criminal prosecution was asked after the witness had already expressed a fear of prosecution. But the committee was not free, after a valid assertion was made to probe the reasons underlying the assertion as it sought to do here. See *Hoffman* v. *United States, supra, United States* v. *Weissman,* 111 F. 2d 260 (C. A. 2) and *United States* v. *Hashmall,* Criminal No. 1752-50, Supp. I, 25.*

10. If as we contend the petitioner had, prior to the answer in question, adequately asserted the privilege and if he had also asserted it subsequent thereto, an important

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* In any event the answer was perfectly consistent with petitioner's claim of Fifth Amendment protection. It might well have been true that acquaintance with the two named individuals would not have directly subjected the defendant to criminal prosecution. The Fifth Amendment protection is, of course, more extensive. As the Court stated in *Blau* v. *United States, supra:*

> "Whether such admissions by themselves would support a conviction under a criminal statute is immaterial."

As long as "answers to the questions asked * * * would have furnished a link in a chain of evidence needed in a prosecution of petitioner", the Fifth Amendment protection was available to the petitioner. *Blau* v. *United States, supra.*

issue of law arises as to whether this answer may be deemed to be an abandonment or a waiver of the privilege. This Court has repeated frequently that there can be no waiver of the claim of Fifth Amendment protection by a witness unless through his testimony in that proceeding the witness' voluntary testimony constitutes an admission or showing of guilt. *Arndstein* v. *McCarthy*, 254 U. S. 71, and *McCarthy* v. *Arndstein*, 262 U. S. 355. See, also, *Smith* v. *United States*, 337 U. S. 137; *Rogers* v. *United States*, 340 U. S. 367; *United States* v. *St. Pierre*, *supra*. The courts must "indulge every reasonable presumption against waiver of fundamental constitutional rights", *Johnson* v. *Zerbst*, 304 U. S. 458, and may not "presume acquiescence in the loss of fundamental rights". *Glasser* v. *United States*, 315 U. S. 60. In the latter case the Court held (at p. 70):

> "To preserve the protection of the Bill of Rights for hard-pressed defendants we indulge every reasonable assumption against the waiver of fundamental rights."

11. The court below held that a specific direction to answer is not a prerequisite to a conviction for contempt. However, a majority of the court below acknowledged that a witness before a Congressional committee who raises some objection must be apprised clearly that the Committee intends that he answer despite his objections.

There are a large number of circumstances under which the mere failure to answer a question put by a Congressional committee is not in itself a sufficient basis for invoking the criminal law. It would serve no purpose exhaustively to analyze all of these circumstances here. It is sufficient to state that one of these circumstances comes into being when a witness raises serious objections to answering.* A majority of the court below recognized—and

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* Compare *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1:

> "The citizen when interrogated about his private affairs has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer."

this wholly apart from whether petitioner asserted the Fifth Amendment privilege—that petitioner's objections were of an order which required some dispositive action by the Committee before he could be held in violation of the criminal law.

The classic manner in which Congressional committees reject the objections of a witness has been by specifically directing the witness to answer. When in 1857 Congress enacted the contempt statute to supplement its inherent powers the practice had been either explicitly to direct the witness to answer or to inform him in comparably clear terms that a refusal would result in contempt proceedings. Section 192 of Title 2 of the Criminal Code punishes every person who "refuses to answer". The legislative history of Section 192 establishes that in passing the statute Congress did not intend to confer new powers upon Congressional committees or inflict any additional burdens on witnesses. See the concurring opinion of Judge Bazelon (Slip Opinion, 24-32), in *Quinn* v. *United States*, supra. Therefore, the term "refusal" must be construed to contain within it the prerequisite of a direction or an explicit warning that contempt might ensue in the event of a failure to answer the question.

In three recent district court cases, the court has assumed that a direction to answer or its equivalent is a prerequisite to contempt. In *United States* v. *Browder*, D. D. C., Criminal No. 1784-50 (March 14, 1951), the court, in acquitting the defendant of contempt of Congress, said:

> "A search of the record will not disclose one instance when the Committee or its presiding member overruled the defendant's objections (based on pertinency) or offered to set him right if, perchance, his observations were ill founded or his position untenable in the eyes of the Committee.
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> * * * * * *

> "His obections were not acted upon and he had the right to believe that his views and explanations were acceptable to the Committee."

This view was followed in *United States* v. *Fox,* D. D. C., Criminal No. 1798-50 (June 29, 1951), where the Court observed that "there is no reason why a different procedure (from that pursued in the courts) should be permissible in cases involving contempt of Congress."

And again in *United States* v. *Kamp,* 102 F. Supp. 757 (D. D. C. 1952), the Court declared:

> "Committees of Congress must conduct examinations in such a manner that it is clear to the witness that the Committee recognizes him as being in default * * *. The witness is not required to enter into a guessing game when called upon to appear before a committee. The burden is upon the presiding member to make clear the directions of the committee, to consider any reasonable explanations given by the witness, and then to rule on the witness' response."

See also *Bryan* v. *United States,* 339 U. S. 323.

Perhaps the most compelling indication that the congressional committees translate their obligation to overrule objections to questions into a directive to answer is the current practice of the committees themselves. Thus the Senate Judiciary Committee and the House Un-American Activities Committee now follow this practice.* The ruling of the court below will inevitably invite an abandonment of this practice.

12. It seems plain that a majority could not be formed in the lower court in support of the direction requirement

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* See Hearings Before the Sub-Committee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary, U. S. Senate, 82nd Cong., 1st Sess., Part I, July 26, 1951, pp. 75-76 and the concurring opinion of Judge Bazelon on the *Quinn* case.

only because they regarded it as too rigid a formula. However, the majority did agree that petitioner must be clearly apprised that his questioner rejects his objections and intends that he answer. The record totally fails to meet this standard. The concurrence which deals with the question in this case offers no support for its conclusion that "The evidence is ample that Emspak was made well aware that the Subcommittee desired answers to its questions despite the grounds he advanced for refusing".*

It would appear that the lower court requires that the citizen's rights be asserted with an overpowering roar but permits his interrogator's responsibilities to be met with an indistinguishable mumble.**

13. Confining ourselves to this issue, it seems plain that the lower court should have remanded the case to the trial court with instructions to acquit. At a minimum, it was required to permit the trier of fact to resolve the issue. The issue involved is a central issue in the case, namely, the intent of petitioner. Thus, in the *Quinn* case the lower court ruled that an awareness of the intention of his inquirer that answers be given despite the objections of the witness is indispensable in establishing the intentional and deliberate character of the defendant's act. "The deliberate and intentional character of the refusal is an element of the offense, to be determined from all the circumstances by the trier of the facts." In the present case the trier

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* *U. S.* v. *Bart, supra,* also contains the unparticularized assertion, although in a less absolute form than here, that the petitioner here was made aware of the attitude of the Committee, "certainly as to some of the questions".

** In rejecting the validity of petitioner's assertion the lower court referred to his experience and ability as a guidepost to what might be expected of him; but it failed to mention the parallel fact that the Committee has heard thousands of witnesses and that it knows how to reject objections when it desires to do so.

patently did not apply this standard.* And the reviewing court likewise improperly permitted its own views with respect to petitioner's guilt to substitute for a trial and an appeal, in the event of a conviction. Compare *Bollenbach* v. *United States*, 326 U. S. 607, and *Weiler* v. *United States*, 323 U. S. 606.**

14. There were twenty members of the indicting Grand Jury who voted on petitioner's indictment. Counsel for the Government has conceded that ten of these Grand Jurors were Government employees and two additional were wives of Government employees (R. 238). Petitioner moved under Rule 12 of the Federal Rules of Criminal Procedure for a hearing on his motion to dismiss the indictment as void in that there were not 12 duly qualified and impartial jurors. *Crowley* v. *United States*, 194 U. S. 461; *U. S. ex rel. McCann* v. *Thompson*, 144 F. 2d 604 (C. A. 2); 18 U. S. C. A. 554a; Rule 6(a)(2), Federal Rules of Criminal Procedure. The district court by Kirkland, J., denied the request for a hearing and rejected petitioner's proffer of proof in support of the motion (R. 118). The Court of Appeals upheld the district court's denial of a request for a hearing, although no majority could be found to support any one basis for this refusal.

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* As Judge Bazelon's dissent indicates the reason why the trial court did not apply the standard was its excessive preoccupation with petitioner's attitude. The trial court gave a dominant emphasis to petitioner's "pique", his "defiance", his "challenge" to the Committee's powers, his "distrust" of its aims and good faith. We believe that the court distorted the witness' attitude and ignored the background of the relationship of the Union and the Committee which understandably had embittered petitioner, a leader of the Union. Apart from this, it seems plain that the court by yielding to its distaste for the witness' manner failed to give him the benefit of an adequately protective legal standard.

** The lower court recognized in the companion *Quinn* case that the issue of the witness' awareness that he was required to answer despite his objection was for the trial court for it remanded on this very issue.

This Court held in *Dennis* v. *United States*, 339 U. S. 162, that Government employees serving as Grand or Petit Jurors will be barred as a group for bias when circumstances are brought to the court's attention demonstrating that Government employees would not be suitable jurors in a particular case.

In *Dennis*, the petitioner urged that Government employees should have been barred from the jury under the special circumstances of his case. The majority of this Court held that such bias must appear from the record and could not be the subject of judicial notice. The concurring opinion of Justice Reed, without which there was no majority, sharply emphasizes the holding of *Dennis*:

> "Mr. Justice Reed concurs in the opinion and judgment of the Court. He reads the Court's decision to mean that Government employees may be barred for implied bias when circumstances are properly brought to the court's attention which convince the court that Government employees would not be suitable jurors in a particular case. Absent such a showing, however, Government employees may not be barred from jury service merely because they are Government employees."

The *Dennis* majority went still further and indicated the precise type of evidence which would ground an exclusion of government employees from jury duty:

> "As far as it appears, the court was willing to consider any evidence which would indicate that investigatory agencies of the Government had recognized in the past or would take cognizance in the future of a vote of acquittal, but no such proof was made. Nor was there evidence of a climate of opinion among Government employees that they would jeopardize their tenure or provoke investigation by such a verdict."

In the instant proceeding the petitioner offered to prove the precise factual condition laid down in *Dennis* as a pre-

requisite for barring Government employees as jurors—namely the existence of a climate of opinion among Government employees that they would jeopardize their tenure or provoke investigation by failing to indict this defendant at the Government's request. Petitioner submitted two affidavits (R. 25, 85) in support of this factual allegation and incorporated these affidavits in a proffer of proof at the argument on the motion for a hearing under Rule 12 (R. 237).*

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* Petitioner offered to prove the following allegations of fact to the Court:

1. Ten of the twenty grand jurors voting on the indictment were Government employees (App. 86). Two other jurors were wives of Government employees (App. 86).
2. Government employees at the time of the indictment and for a number of years previous have been the subject of an active campaign to determine whether they are in any way sympathetic or tolerant to Communists or any person associated with Communists or with any organization charged to be a "Communist front" (App. 86).
3. At the time of the indictment, Congressional leaders, Congressional committees and heads of Federal executive agencies were engaged in efforts to "purge" from Government employment any person found to be so stigmatized (App. 87).
4. Under the President's Loyalty Order, Executive #9835, Government employees are subject to the most intensive and searching investigation of all of their conduct, beliefs and associations involving in the remotest manner sympathy with persons or organizations charged to be Communistic (App. 88).
5. At the very time that the Grand Jury in this proceeding was considering whether to return indictments, the United States Civil Service Commission reported publicly that 280 Government employees had already been dismissed as "security risks" under the loyalty program; that 13,202 employees had been the subject of a full and complete investigation by the Federal Bureau of Investigation; that 1593 employees had resigned while under FBI investigation and that 1171 employees had left their Government jobs before the loyalty investigation had been completed (App. 91).
6. The actual conduct of the loyalty review boards has been such as to create the distinct impression among Government employees that the only way a Government employee can safeguard his livelihood is to express active hostility to any

In addition to the specific allegations of fact set forth in petitioner's affidavits and incorporated in the proffer of proof, petitioner attached a number of exhibits to the affidavits containing statements by experts, all tending to show that:

1. Because of the general atmosphere of intimidation, Government employees have "a low morale" (R. 96) due to the fear that they will be called to account for any activity or expression of opinion indicating the slightest sympathy with any person charged with being a Communist (R. 96).

2. Government employees as a result of this atmosphere are frightened, "upset and scared" (R. 98).

3. All Government employees know the type of investigation made in loyalty cases and therefore assume that any type of activity or expression of opinion which expresses sympathy for ideas or individuals charged with being Communists provides grounds for suspicion of their own "loyalty" (R. 102).

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idea, person or organization which might possibly be attacked as Communist (App. 91-92).

7. Numerous articles in the public press and reports over the radio concerning intensive nature of the loyalty investigation have engendered fear and apprehension among Government employees as to the retention of their jobs as a means of livelihood (App. 90).

8. The transcript of the hearing before the House Committee on Un-American Activities was before the Grand Jury during their deliberations. This transcript revealed to the Grand Jurors that the defendant was charged with contempt of the House Committee on Un-American Activities and was being investigated by the House Committee for alleged Communist activities (App. 86).

9. The House Committee on Un-American Activities has been extremely active in this investigation of alleged disloyalty among Government employees and has publicly announced that its files and reports have been used by the investigating

4. The loyalty program is and has been used unjustly and upon the slightest provocation as a means of depriving Government employees of their jobs (R. 105).

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agencies of the Federal Government to determine the loyalty of Government employees (App. 87).

10. At the time of the Grand Jury hearings and a number of years prior to that, a number of committees of Congress in addition to the Un-American Activities Committee, have conducted intensive investigations into the loyalty of Government employees (App. 92).
11. There had been attempts at public intimidation of jurors and Federal judges in proceedings involving alleged Communist activities (App. 88).
    a) A resolution was introduced in Congress demanding the investigation of the presiding justice in the first Hiss trial, impugning his loyalty solely because he attempted to exercise the functions of his office to the best of his ability (App. 88).
    b) One of the jurors who refused to vote for conviction of Hiss was required to appeal to law enforcement agencies for protection against individuals harassing him because of his vote (App. 88).
    c) When the Court of Appeals for the Ninth Circuit granted bail to Harry Bridges, accused of Communist affiliation, a resolution was introduced in the Senate demanding investigation of these jurists (App. 88).
12. The Federal Bureau of Investigation had investigated and checked every Federal grand juror who was a Government employee. This individual's employment is conditioned upon a favorable report from that agency which is a subdivision of the prosecutor's office (App. 94).
13. The Department of Justice announced that the Federal Bureau of Investigation was engaged in the greatest man-hunt among Federal Civil Service employees that this country has ever engaged in (App. 93).
14. Information concerning loyalty of the grand jurors who are Federal employees was available to the Attorney General's office prior to the time the grand juror was sworn in (App. 94).
15. Each and every grand juror who is a Government employee remains under the surveillance of the FBI during his entire employment by the Government (App. 95).
16. The Director of the Federal Bureau of Investigation stated publicly that whenever a Federal employee is accused of "Communist affiliations", whether or not such accusations are based on fact, a full scale investigation is instituted by the Bureau (App. 93).

5. The Federal Bureau of Investigation investigates every detail of the private lives, opinions, activities, reading habits and thoughts of an individual involved in a Government employee loyalty check. The FBI uses every technique, including wire-tapping and anonymous informants (R. 108).

6. As a result of these facts, prominent observers of the Washington scene have concluded that "suspicion and uncertainty" becloud Government service today (R. 110).

These allegations of fact describe in the greatest detail a climate of opinion among Government employees that "they would jeopardize their tenure or provoke investigation", by any conduct which might be considered favorable to this petitioner. Upon such a showing, under the rule of *Dennis,* the indictment would have to be dismissed.

Despite this showing, Judges Clark, Miller and Proctor upheld the denial of a hearing holding that:

> "The affidavits which he (the petitioner) submitted to support his motion for hearing had as his sole basis the argument that Government employees on the Grand Jury were incapable of reaching an unbiased decision, and they did no more than assert existence of a 'miasma of fear' so clearly rejected under the Dennis case. Without more, there was no ground upon which an order for hearing might be founded, and there was no error in the finding thereof" (R. 354-55).*

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* The district court refused to hear the evidence offered, denied petitioner's motion for a hearing, struck *sua sponte* from the record the main affidavit containing the allegations of fact, and rejected petitioner's proffer of proof made in open court (R. 118). A refusal to hear evidence offered in support of allegations that a grand or petit jury was improperly or illegally constituted is reversible error. *Carter* v. *Texas,* 177 U. S. 442; *Smith* v. *Mississippi,* 162 U. S. 592; *Tarrance* v. *Florida,* 188 U. S. 519; *Glasser* v. *U. S.,* 315 U. S. 60, 87; *Morford* v. *U. S.,* 339 U. S. 258.

The rejection of a proffer of proof made in open court in support of a motion to dismiss an indictment for improper constitution of grand or petit juries is likewise reversible error. *Carter* v. *Texas, supra; Brownfield* v. *South Carolina,* 189 U. S. 426; compare *Glasser* v. *U. S., supra.*

It is impossible to reconcile the holding of these three judges with either the majority or the concurring opinion in *Dennis*. The *Dennis* majority specifically indicates the nature of the evidence which the Court has held will be received. Petitioner's offer of proof set forth in great detail evidence "which would indicate that investigatory agencies of the Government had recognized in the past or would take cognizance in the future of a vote of acquittal". The offer of proof furthermore was designed to adduce "evidence of a climate of opinion among Government employees that they would jeopardize their tenure or provoke investigation by such a verdict." Judges Clark, Miller and Proctor state that an assertion of the "existence of a 'miasma of fear' " was "clearly rejected in the Dennis case." These judges, we suggest, misread the *Dennis* case. The majority of the Court in Justice Minton's opinion, did not "reject" a proffer of a "miasma of fear". The majority refused to take "judicial notice" of such a "miasma" (at p. 172). This petitioner has done the very thing which the *Dennis* case authorizes. He has offered to prove the existence of this "miasma of fear". Unless the *Dennis* opinion has no longer any efficacy whatsoever, petitioner should have been permitted to make his proof in a proper hearing.*

The concurring Judges, Prettyman, Washington, Chief Judge Stephens and Fahy do not read the *Dennis* case as do Judges, Clark, Miller and Proctor. These members of the Court of Appeals assume for the purposes of this case that the concurring opinion of Mr. Justice Reed in *Dennis* is "an accurate summation of the opinion of the Court" and sum-

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* The Government suggested in the argument before the Court of Appeals that bias even if proved would not disqualify the Grand Jury. As the concurring opinion of Judge Bazelon points out: "What the government is proposing is *pro tanto* repeal of the Fifth Amendment's assurance of "a presentment or indictment in a Grand Jury" (R. Opinion 105). It seems clear that bias and partiality resulting from fear induced from an atmosphere of intimidation would destroy petitioner's "Federal constitutional right to a fair and impartial Grand Jury." *Cassell* v. *Texas*, 339 U. S. 282.

marize the rule of *Dennis* in the following manner: "The question before us is whether circumstances were brought to the trial court's attention which demonstrated that government employees would not be suitable grand jurors in the particular case" (R. 359).

The concurring Judges therefore have not rejected petitioner's contention that the rule of *Dennis* permits the defendant in a criminal proceeding to challenge the indicting grand jury by offering evidence tending to show that a "miasma of fear" had "developed among government employees in the District of Columbia which caused such employees to come reasonably to the conclusion that any action by them which could be considered sympathetic toward the person accused of offenses arising out of the investigation of Communist activities would endanger their government employment" (R. 360). The concurring Judges do not hold that petitioner's offer of proof is insufficient in law. To the contrary, they indicate that such an offer might be sufficient in "other cases and other circumstances" (R. 361).

The concurring members of the court base their affirmance here on the assumption that in this particular case there was no area of discretion for the Grand Jury. They emphasize that the following circumstances were "brought to the Court's attention" upon the motion:

> "1. The fact that the charge before the Grand Jury was that appellant refused to answer certain questions, and (2) the fact that appellant said he had refused to answer this question" (R. 362).

These Judges conclude, as a result of these two circumstances, that this Grand Jury was not called upon to evaluate the probabilities of a "doubtful *prima facie* case or of a charge in the realm of opinion or controversy" (R. 362). The concurring Judges conclude that since the only contested issue before the Grand Jury was the claim of constitutional privilege and that since this was a matter of "defense of justification" (R. 362), the Grand Jury could do nothing under these circumstances except to indict.

We suggest that this conclusion of Judges Prettyman, Washington and Chief Judge Stephens joined in by Judge Fahy in his concurring in part, dissenting in part opinion * is in conflict with their own opinions in *Quinn* v. *United States*, decided concurrently.

In *Quinn*, Judges Prettyman, Washington and Chief Judge Stephens hold that "the deliberate and intentional character of the refusal is an element of the offense to be determined from all the circumstances by the trier of the facts" (Quinn opinion, p. 9) and point out in amplification that "to constitute an offense, refusal to answer must be intentional" and that " it must appear that [defendant] was aware of the intention of his inquirer that the answers were required despite his objections" (Quinn opinion, pp. 9, 10). We assume, for the purposes of this petition, that the discussion of Judges Prettyman, Washington and Chief Judge Stephens represents the opinion of the Court on the question of "direction". To hold that a *prima facie* case of violation of the statute is present, a grand jury must therefore consider whether it appears from the evidence that the witness "was aware of the intention of his inquirer that answers were required despite his objections." Thus the lower court now holds that this is not a matter of "defense of justification", but rather *"an element of the offense"*. Hence this is an issue which the Grand Jury would have had to consider in deciding whether there was a *"prima facie"* case of violation of statute.

We suggest therefore, that the opinion of Judges Prettyman, Washington and Chief Judge Stephen on the decisive issue of the "deliberate and intentional character of the refusal" as an element of the offense indicates on its face that there was in fact an area of discretion before the Grand Jury. The Grand Jury might have concluded on the basis of the record that the petitioner was not "aware of the intention of his inquirer that answers were required despite his

* See also Judge Fahy's concurrence in *Quinn*.

objections". That this was a reasonably possible conclusion for an impartial trier to arrive at is evidenced by the remand in *Quinn* which instructs the trial court to consider this very point.

A subsequent decision of the Court of Appeals, *Bowers* v. *United States*, decided February 12, 1953, further indicates the inherent conflict in the opinion of the concurring judges. In *Bowers*, the Court of Appeals held that pertinency is a material ingredient of an offense under the contempt statute. If pertinency is a material ingredient of the offense, this, too, must be shown to the Grand Jury in demonstrating the existence of a *prima facie* case. Thus, at a minimum the Grand Jury which considered petitioner's indictment had before it two areas of discretion: (1) the presence or absence of an awareness of the intention of the inquirer that answers were required despite objections as well as (2) the presence or absence of the ingredient of pertinency. Thus, it seems clear that the rule of *Dennis* would be totally frustrated by implying as the concurring judges below do, that it is applicable to all except this case, since here, the Grand Jury could do nothing under these circumstances except indict. It is clear that the indicting Grand Jury in this cause should have considered the presence or absence of several important ingredients of the offense. Under such circumstances there is no justification whatever for refusing to follow the mandate of this Court in *Dennis*.

In *Quinn*, Judge Bazelon in a careful opinion concurred in by Judge Edgerton indicates his conclusion that the lower court has misread *Dennis*. Judge Bazelon concludes after a full analysis that the rule of *Dennis* required the granting of petitioner's motion for a hearing on the question of the Grand Jury. The opinion of Judge Bazelon highlights the fundamental considerations involved in this question. This Court has held that the Grand Jury is "one of the securities to the innocent against hasty, malicious and oppressive public prosecutions", *Ex parte Bain*, 121 U. S. 1, and that the Grand Jury "is designed as a means

not only of bringing to trial persons accused of public offsenses upon just grounds, but also as a means of protecting the citizen against unfounded accusations, whether it comes from Government or be prompted by partisan passion or private enmity." *Ex parte Bain*, supra, p. 11. As Judge Bazelon points out:

> "Preservation of the integrity of the grand jury system is no more a matter of individual concern. It touches our democratic insistence on the fair administration of law. When the grand jury is not properly instituted 'reversible error does not depend on a showing of prejudice in an individual case the injury is not limited to the defendant—there is injury to the jury system, to the law as an institution, to the community at large and to the democratic ideal reflected in the processes of our courts. Ballard v. U. S., 329 U. S. 187, 195'."

Sharp division within the Court of Appeals on this question, the lack of a firm majority of the court, and the inner contradictions in the opinion of the judges, all highlight the necessity for the granting of review. This Court has solemnly avowed in *Dennis* that "preservation of the opportunity to be heard is a guarantee of defendant's right to an impartial jury". If the opinions of the Court of Appeals stand unreviewed by this Court, this right becomes meaningless. The question here presented will continue to arise constantly in the District of Columbia unless resolved and we respectfully suggest that the present record affords the opportunity for a decisive solution by the Court.

15. The Court in *United States* v. *Rumely*, 345 U. S. 41, has indicated that Congressional resolutions which form the bases for investigative activities must be construed so as to harmonize their mandates with the First Amendment. See also the memorandum opinion of Judge Youngdahl in *United States* v. *Lattimore*, D. D. C. Criminal No. 1879-52, decided May 2, 1953. We do not intend here to reiterate arguments that have already been pressed upon

the Court in support of the view that the Resolution has been applied in violation of the First Amendment. Surely, the Court cannot ignore the fact that the obtaining of information for legislative purposes, the power in aid of which the Resolution was passed, has become a hollow pretext for the compilation of a vast political *index purgatorius*, the systematic destruction of political dissent and the subjection of thousands of citizens not merely to ruthless invasions of privacy but to serious sanctions without due process of law. Congressional committees now sit in judgment over the political liberty of the American people—teachers, writers, trade unionists, editors, preachers, doctors and just ordinary Americans.* We have reached the stage where a "clearance" from the Committee is often indispensable to one's livelihood, career and good name. The assertion by Congress of these powers to sit in political judgment must be reviewed by this Court. Unless these powers are curbed and constitutionally related to the legislative process, there is a serious danger of irreparable injury to our constitutional form of government.

The current hue and cry concerning Communism has converted the activities of Congressional committees into a vast game of hare and hounds. The only valid justification for these activities has been left far behind as the Congressional subpoena-mill grinds out its paper trail of pursuit. As new committees join in the chase and compete with one another, new abuses are perpetrated and ever new "sensational revelations" are promised to divert attention from those abuses. This process has now reached the point where the same individuals have been victimized

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* When protests are made that investigations invade constitutionally protected areas such as the schoolroom, the pulpit, or the lecture platform, the Committees reply that they are not concerned with what is taught or preached but rather with individual teachers, preachers or lecturers. Apart from the fact that inquisitions directed against individuals are a most effective way of censoring content, Congressional committees, as Chief Justice Miller reminded us a long time ago, were never intended to be "the Grand Inquest of the Nation."

over and over again and where to the invasions of the rights of the individual have been added serious attacks upon the principle of separation of powers.

CONCLUSION

The petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia to review its judgment.

Respectfully submitted,

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SUPPLEMENT I

Unreported Oral Opinions by District Court in Companion Cases

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. FRANK PANZINO, Defendant.	Criminal No. 1747-50

The above entitled matter came on for further consideration before Honorable T. Alan Goldsborough, United States District Judge, at 11:15 a. m., pursuant to adjournment.

ORAL CONCLUSIONS OF THE COURT

The Court: Gentlemen, the Court has given this matter a great deal of thought, and the Court has reached the conclusion that there should be, by the Court, a general discussion in order to make a proper background for the Court's decision, and in order that not only the Counsel but the public may understand in what metier the courts are working in a great many of these cases, which, so far as I know, have been brought down from the Congress.

The Court wants to discuss just what the settled law is about the operation of the Fifth Amendment, in so far as self-incrimination is concerned.

The law, as interpreted by the Supreme Court, has not changed for a period of 143 years. The leading case is

the case of the *United States* v. *Burr*, in which Burr's secretary was asked whether or not he interpreted and understood the purport of a letter in code which had been apparently physically written by him.

Chief Justice Marshall delivered the opinion in that case and said that if the question to the accused had been as to whether or not at the time the letter was written he knew an interpretation of the coded message, he could plead the protection of the Fifth Amendment, because it might have been held under those circumstances that he was guilty of misprision of treason, but as the question was not directed to what was in the letter at the time it was written and mailed, and whether he knew what was in it, what the translation was, at the time he was asked the question, and because that could not possibly make him—the answer to that question could not possibly make him liable to criminal prosecution, that the court would let him answer.

This is the general principle which was stated by Chief Justice Marshall and which has continued throughout the history of the country without any intermission between that time and the present date.

It will take me a few minutes to do it, but I am going to read a part of this opinion:

> "It is a settled maxim of law that no man is bound to criminate himself. This maxim forms one exception to the general rule, which declares that every person is compellable to bear testimony in a court of justice. Where the witness who considers himself as being within this exception, it is alleged that he is, and from the nature of things must be, the sole judge of the effect of his answer; that he is consequently at liberty to refuse to answer any question if he will say upon his oath that his answer to that question might criminate himself.
>
> "When this opinion was first suggested, the Court conceived the principle laid down at the bar to be too broad, and therefore required that authorities in support of it might be adduced. Authorities have been adduced and have been considered. In all of them the

Court could perceive that an answer to the question propounded might criminate the witness, and he was informed that he was at liberty to refuse an answer. These cases do not appear to the Court to support the principle laid down by the counsel for the witness in the full latitude in which they have stated it. There is no distinction which takes from the Court the right to consider and decide whether any direct answer to the particular question propounded could be reasonably supposed to affect the witness. There may be questions no direct answer to which could, in any degree, affect him; and there is no case which goes so far as to say that he is not bound to answer such questions. The case of *Goosely*, in this Court, is, perhaps, the strongest that has been adduced. But the general doctrine of the judge in that case must have referred to the circumstances, which showed that the answer might criminate him.

"When two principles come in conflict with each other, the Court must give them both a reasonable construction, so as to preserve them both to a reasonable extent. The principle which entitles the United States to the testimony of every citizen, and the principle by which every witness is privileged not to accuse himself, can neither of them be entirely disregarded. They are believed both to be preserved to a reasonable extent and according to the true intention of the rule and of the exception of that rule by observing a course which it is conceived courts have generally observed. It is this:

"When a question is propounded, it belongs to the court to consider and decide whether a direct answer to it can implicate the witness. If this be decided in the negative, then he may answer it without violating his privilege which is secured to him by law. If a direct answer to it may criminate him, then he must be the sole judge what his answer would be. The court cannot participate with him in this judgment, because they cannot decide on the effect of his answer without knowing what it would be; and a disclosure of that fact to the judges would strip him of the privilege which the law allows, and which he claims. It follows necessarily, then, from this statement of things, that if the question be of such a description that an

answer to it may or may not criminate the witness, according to that answer, it must rest with himself, who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath that his answer would criminate himself, the court can demand no other testimony of the fact. If the declaration be untrue, it is in conscience and in law as much a perjury as if he had declared any other untruth upon his oath, as it is one of those cases in which the rule of law must be abandoned, or the truth of the witness be received.

"The counsel for the United States have also laid down this rule according to their understanding of it; but they appear to the Court to have made it as much too narrow as the counsel for the witness has made it too broad. According to their statement, a witness can never refuse to answer any question unless that answer, unconnected with other testimony, would be sufficient to convict him of a crime. This would be rendering the rule almost perfectly worthless. Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible but a probable case that a witness, by disclosing a single fact, may complete the testimony against himself, and to every effectual purpose accuse himself entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed within his own bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description.

"What testimony may be possessed, or is attainable, against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws."

Now, of course, that is not new law. That was a decision by Chief Justice Marshall which was handed down in

1807. But I do want to emphasize the fact that that is one construction of the application of the Fifth Amendment, so far as incrimination is concerned, which has never been deviated from by the Court in any case.

The case decided in 1892, which is a leading case, the case of *Counselman* v. *Hitchcock,* in which the defendant was asked whether or not he had received rebates, shipping rebates—a law had been passed making it unlawful to give rebates—and the Government contended that there was no law protecting rebates, and that therefore he should be compelled to answer, but the Supreme Court said that was not true; it said that if he admitted receiving rebates it might incriminate him—it must have been a conspiracy, or something of that kind—but, anyhow, he was not required to answer, and the Supreme Court in that case, which, as I say, was a leading case, and has been referred to by both Federal and State courts at length, just as Chief Justice Marshall's opinion, which I have just read, which was filed and handed down in June of 1807.

Now, in the *Patricia Blau* case, in which the Supreme Court handed down its opinion on December 11, 1950, the questions asked in that case were as follows:

> "Mrs. Blau, do you know the names of the State officers of the Communist Party of Colorado?
>
> "Do you know what the organization of the Communist Party in Colorado is, the table of organization of the Communist Party of Colorado?
>
> "Were you ever employed by the Communist Party of Colorado?
>
> "Did you ever have in your possession or custody any of the books and records of the Communist Party of Colorado?
>
> "Did you turn the books and records of the Communist Party of Colorado over to any particular person?
>
> "Do you know the names of any persons who might now have the books and records of the Communist Party of Colorado?
>
> "Could you describe to the grand jury any books and records of the Communist Party of Colorado?"

The Supreme Court by unanimous decision held that the witness could not be compelled to answer those questions. It called particular attention to the fact that at the time of the questioning the Smith Act was the law of the land. Now, the Smith Act is as follows:

> "Whoever knowingly or willfully advocates, abets, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the Government of the United States or the government of any State, territory, district, or possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or
>
> "Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or
>
> "Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of or affiliates with any such society, group, or assembly of persons, knowing the purposes thereof—shall be fined"

and so forth.

Now, it is perfectly evident in this case, and it is conceded by the Government, that the answer to all three questions asked, whether he at any time attended any Communist meeting with Tom Fitzpatrick, whether the defendant attended a Communist Party meeting with Charles Copeland, whether the defendant was or had ever been a member of the Communist Party, might each constitute incriminating matter, as interpreted in the *Burr* case, and, as I said before, as interpreted in every other case down to the present.

Now, in the case decided by the Supreme Court February 26, 1951, *Jane Rogers* v. *The United States,* the Court held that the witness should answer the question, for three reasons:

In the first place, the Court said that the defendant's decision not to answer the question was an afterthought;

Second, that she had answered several material questions; and that under the decision of the Supreme Court she could not stop then and decide whether or not she should answer other questions; and

Third, the Supreme Court said that the Smith Act was not on the statute books at the time of her interrogation but it expressly affirmed the *Patricia Blau* case, 340 U. S. 159, and held that questions connected with the Communist Party are subject to the privilege against self-incrimination as calling for disclosure of facts tending to incriminate under the Smith Act.

Now, a great many people have gotten the impression that in these cases—I am sure I cannot prove it, and I am not sure in this case, in some way or other—that the courts are winking at Communism.

The courts, in the first place, haven't anything to do with the policy of the law, as long as it is Constitutional law. What the courts have to do is enforce the law, certainly when it is perfectly clear what the law is.

Now, what I am about to say right now—I am just simply speaking for myself; I am not authorized to speak for any of the other members of this court or any other court—but my belief is, and, again, I cannot prove it; I only know what I think about it—my own opinion is this: That, knowing, as I do so well, the members of this court, that the views which I am about to express are their views.

A great many years ago I read everything that Karl Marx had to say, his Manifesto of 1848, and the main three volumes of Das Kapital.

Now, we have had, within the memory of all of us in this courtroom, three situations where we have had dictatorships. We have had one in Germany, what was known as

Nazism; we had in Italy what was known as Fascism; and we have in Russia what is known as Communism.

The Court thinks that there is no essential difference between one dictatorship and another. The Court thinks that in no dictatorship that it knows anything about has there been any ideology involved at all, and certainly the desire of the man and those immediately around him to have absolute control of everything that was within that jurisdiction. The Court thinks that there is no exception to this, and in every dictatorship, certainly every one that I have spoken of, the very first thing that is done is to destroy the labor unions, just destroy them, wipe them off the face of the earth.

The Court thinks that anyone who advocates Communism as Communism is practiced—I am not talking about Karl Marx' communism; I don't agree with Karl Marx but that is a very different thing from what is known as Communism at this time in the world.

The Court thinks that anyone who advocates Communism is just simply a sucker. Of course, attempts are made, with people who go to Russia, for instance, to show only the so-called bright side, but that is an old Russian trick for hundreds of years. Authentic history tells us that Catherine the Great, Empress of Russia—she understood there was a very bad condition down in Southern Russia, bordering on the Black Sea, and those who were interested in keeping the conditions as they were built false fronts along the coast of the Black Sea. After they got them built, they induced the queen to take a boat ride on the Black Sea and were able to fool Catherine the Great into thinking that conditions in southern Russia were good, instead of very, very evil.

This Court thinks that there are certain dicta—now, ordinarily a dictum is a mere flourish of the tongue which says something that people like to hear, but the Court thinks that there are certain dicta which are absolutely true and which will be true under all circumstances, and to the truth

of which there is nothing in history of the world as an exception.

> "Power always corrupts and absolute power corrupts absolutely."

Another:

> "There is no such thing as a benevolent despot."

Now, that is what this Court thinks about the situation.

But what the courts of this jurisdiction are doing now in cases where they have to direct a verdict for the defendant is to uphold the Constitution of the United States, which includes the Bill of Rights, which includes the Fifth Amendment, which states, in so far as this case is concerned:

> "No person * * * shall be compelled in any criminal case to be witness against himself * * *."

In this case the Government takes the position that this witness was simply a rebellious witness and took the position that the Congress had no right to investigate and that it was from that standpoint that he saw fit to decline to answer.

Well, now, he did take that position, but the Government said that in this case he did not claim the privilege under the Fifth Amendment. But he did not answer any question included in this indictment, which distinguishes it from that *Rogers* case.

Now, I don't know whether he knew what was in the Fifth Amendment or not, but what he said was this—this is his final answer, which involves his refusal to answer the questions:

> "I think again, Mr. Chairman, under the fifth amendment, that is my own personal belief."

Well, the Fifth Amendment contains this provision:

> "No person * * * shall be compelled in any criminal case to be a witness against himself * * *."

Now, the Government takes the position that, even though he invoked the Fifth Amendment, he did not know what he was invoking, and that, therefore, the Court has the right to say beyond all reasonable doubt that he did not invoke the privilege against self-incrimination.

Now, let's see about that. Now, here is a charge that I have given to the jury in a serious criminal case, and which, of course, I had to give myself when I took this case for trial, because I was sitting as a jury:

> "The Court charges you that the law presumes the defendant innocent until proven guilty beyond a reasonable doubt; if you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find him not guilty. You are further instructed that you cannot find the defendant guilty unless from all the evidence you believe him guilty beyond a reasonable doubt. The Court further charges you that a reasonable doubt is a doubt based upon reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied as to the defendant's guilt, you have a reasonable doubt, but if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.
>
> "It is not necessary that you should have a certainty, which does not belong to any human transaction whatever. It is only necessary that you should have that certainty with which you should transact your own most important concerns in my (sic) life."

Now, although he refused to answer these questions, the last thing he did say, he invoked the protection of the Fifth Amendment.

I am asked by the Government to decide that beyond all reasonable doubt he did not invoke the protection of the Fifth Amendment as to self-incrimination; and that the Court cannot do; and the Court grants the defendant's motion.

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. JAMES J. MATLES, Defendant.	Criminal No. 1745-50

Before Honorable F. Dickinson Letts, District Judge of the United States District Court for the District of Columbia,

OPINION OF THE COURT

Rendered Thursday, March 8, 1951

The Court is prepared to rule. What I wish now to say must not be regarded as the approval of this Court as to the manner and demeanor of the defendant when he appeared as a witness before the Congressional Subcommittee.

The Court thinks he was an obdurate witness and that he failed to show respect to the Congressional Subcommittee which the dignity of a Congressional Committee demands. Nevertheless, as I see the case, the central question is whether or not this defendant invoked his Constitutional privilege against self-incrimination. If he did that, he did it by mentioning the First and Fifth Amendments, and it would be simple enough for this Court to say that he has not invoked his privilege against self-incrimination, except for one part of the record.

As I have indicated in one other case, it seems necessary to view the questions and the responses given in the light of the setting when the questions were asked and the responses made and that includes the Committee itself.

In this case the Subcommittee was a Subcommittee of one, Representative Moulder, and it seems important, if you can, to understand the mental operations of Representative Moulder.

I think we have that when we look at one part of this record. It has been referred to by Counsel for the defendant, and it is a part of the record that I have given much thought to. The primary question is whether or not this defendant made known to Representative Moulder that his refusals to answer were upon his Constitutional rights as guaranteed by the Fifth Amendment. Did Representative Moulder understand the defendant's reference to the Fifth Amendment? If he did and understood that the defendant was invoking his Constitutional privilege against self-incrimination, then nothing further was required of the defendant to make his position clear and I am impelled to the belief that Representative Moulder did appreciate the defendant's position and the grounds upon which he purported to stand in refusing to answer the questions propounded.

I have mulled over the language which we find on page 856 of the record. Counsel for the committee propounded this question:

> "In 1933 you were an organizer for the Steel and Metal Workers Industrial Union, were you not?"

The Defendant: "My answer is the same."

Representative Moulder, who constituted the Subcommittee then inquired of the defendant:

> "You refuse to answer for the reasons stated, that it violates your rights provided under the Constitution?"

To which the defendant answered: "That's right."

Representative Moulder then asked: "What are those provisions, do you know?" And the defendant answered: "I believe the First and Fifth Amendments."

Representative Moulder then inquired: "In what respect do they justify your refusal to answer the question?"

And the defendant replied: "I am so advised by counsel."

At this point Mr. Scribner, counsel for the defendant, who was present volunteered: "I will be happy to give the basis for that if you wish, Mr. Congressman."

Now, the record indicates that the suggestion of defendant's counsel was not adopted and he was not invited to further explain the position of the defendant in relying upon the First and Fifth Amendments. That indicated to my mind that Representative Moulder understood the position of the defendant and the purport of the objections that had been made.

Upon the whole case the Court finds the defendant not guilty.

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. ESTHER TICE, Defendant.	Criminal No. 1751-50

Before Honorable James Kirkland, District Judge of the United States District Court for the District of Columbia

OPINION OF THE COURT

Monday, March 12, 1951

The Court: At this point, the Court will make the following findings of fact and conclusions of law.

The Court finds as a fact that the defendant in this cause, Esther Tice, was actually before the Committee on Un-American Activities of the House of Representatives; that she was before that committee in the District of Columbia on July 15, 1950; that she was there either by the service of a subpoena or by voluntary appearance, but at all events, she was before the committee.

The Court finds as a fact that the committee was then engaged in an inquiry pursuant to authority conferred upon the committee by law, and particularly subsection (q)2, Section 121, of the Legislative Reorganization Act of 1946, 60 Statutes at Large, page 828, and also in pursuance of House Resolution 5 of the 81st Congress.

The Court finds that on this occasion, there was a full quorum of the committee present, and that the defendant before the bar was asked the three questions which appear in the several counts forming a part of this indictment, and that she declined to answer those questions.

The Court finds that the three questions were pertinent to the inquiry for which the committee had been constituted and was then conducting hearings on this date, July 15, 1950.

As I say, the questions were pertinent and the defendant before the bar, the Court finds as a fact, refused to answer them.

The question is whether or not this defendant has claimed a privilege against such answering by virtue of the right imposed to her as a right of the United States under the Fifth Amendment to the Constitution.

The Court finds as a fact—and I merely elaborate on it because I think the answers must be taken in the light of the context of the inquiry—that the first question propounded to this witness was:

> "Do you know whether Maurice Horowitz was a member of the Communist Party?"

to which the defendant before the bar answered:

> "I am sorry. I am going to have to invoke my right under the first and fifth amendments to the Constitu-

tion at this time and refuse to answer on the grounds that it might incriminate me."

The first count of this indictment revolves around the next question asked:

"Do you know Robert Gunkel?"

The answer given was:

"Same answer," which the Court finds as a fact for the decision here relates back to the prior answer given to the initial question asked.

Then, the next count of this indictment is the third question: namely,

"Did Robert Gunkel attend meetings of the UE staff while you were field organizer?"

to which the answer given by the defendant before the bar was:

"I have given you the answer. The answer remains the same."

Again, the Court finds as a fact that the answer relates back to the first answer given and that it did involve the invoking by this defendant of her rights, particularly under the Fifth Amendment to the Constitution, which she elaborated by saying, "and refuse to answer on the grounds that it might incriminate me," which leaves no doubt in this Court's mind that it was the Fifth Amendment that she particularly relied upon; and for what it is worth, the Court will hold as a matter of law that the First Amendment, under recent decisions, has no application here.

The third count of this indictment appears as the fifth question asked in this particular colloquy, the question being particularly:

"Did Ruth Schecter come to the UE office and attend any meetings held there?"

The answer given by the defendant at the bar was:

"The same answer as before,"

which, again, the Court interprets to be a claim of her privilege under the Fifth Amendment, particularly her amplification that she refused to answer on the grounds that the question might incriminate her.

Not only is it clear to this Court that the witness before the subcommittee did make her claim of self-incrimination, but it was elaborated in the colloquy that follows a question as to whether the witness attended the Workers School in Cincinnati operated by Hy Lumer, where the witness—and it is a part of the record—stated:

> "I refuse to answer on the grounds that it might incriminate me."

Continuing further in the colloquy, she was asked by Mr. Walter the question:

> "By that do I understand you to mean that you refuse to answer on the ground that to answer the question might incriminate you?"

to which the defendant at the bar replied, "I do."

The Court therefore holds that the witness did invoke her privilege against incrimination, and the next problem is whether or not there was reasonable apprehension on her part to fear prosecution at the hands of the United States for a violation of a Federal statute.

The Court finds as a fact that this defendant had sat or been present for several days while testimony was being given before this particular subcommittee, and that she in particular had heard the witness Decavitch point her out and state, in substance, that "She is presently sitting in the room back there. I think she is knitting." She was also identified through a witness, Harry Fiering, as being a member of the Communist Party who would take discipline and orders.

In addition to that, the prosecutor in this cause, as has been his reputation for twenty-five years, was exceedingly careful of her rights, to be fair, so that even in the Government's case there was identified to the Court in this cause

the fact that one Robert Gunkel was at one time an organizer of the Communist Party in Ohio, and there was reference made while Mr. Tavenner was on the stand to a part of the record at page 2783, where the said Robert Gunkel was described as the head of the Communists in the Cincinnati area.

Again I say Mr. Murray was fair enough to bring out in the Government's case that the witness, Ruth Schecter, was deemed to be connected with the United Electrical Workers, and that there was testimony from the record given by Mr. Tavenner that a Miss Steinbacher, who gave considerable testimony before the subcommittee, had stated that when she, the witness, Miss Steinbacher, had entered the Communist cause or Party, she was "recruited into the Communist Party by Ruth Schecter."

It would appear to follow as a fair deduction from the testimony that Ruth Schecter was likewise a Communist or reputed to be a Communist in fact.

As against that, I think the case of *United States* vs. *Weisman*, 1940, 111 Fed. 2d 260, bears upon the issue of whether or not the defendant at the bar had reasonable apprehension to believe she was in danger of Federal prosecution.

The Court also believes that the case of *Counselman* vs. *Hitchcock*, *United States* vs. *Rosen*—the latter case being reported in 1949 at 174 Fed. 2d 187, certiorari denied 338 U. S. 851—that where there was evidence of an incriminating nature, the witness had a right, in the absence of proper immunity statute, to claim that personal privilege.

It has been argued that merely to say that one knows or does not know a person is not of itself incriminatory. However, the recent cases of *Alexander* vs. *The United States*, reported in 181 Fed. 2d 480, as well as *Kasinowitz* vs. *The United States*, and especially the case, of *Blau* vs. *The United States*, reported in 19 L. W. 4062, and decided December 11, 1950, seem clearly to be in point.

I think it would be controlling as a matter of law in this case to read that part of the Blau case which I feel is particularly applicable:

"At the time petitioner was called before the Grand Jury,"——

We could substitute, if you will permit me to interpolate, "At the time petitioner was called before the subcommittee."

"—the Smith Act was on the statute books, making it a crime, among other things, to advocate knowingly the desirability of overthrow of the Government by force or violence, to organize or help to organize any society or group which teaches, advocates, or encourages such overthrow of the Government, to be or become a member of such a group, with knowledge of its purposes.

"These provisions made future prosecution of petitioner far more than 'a mere imaginary possibility (*Mason* vs. *The United States*, 244 U. S. 362, 366).' She reasonably could fear that criminal charges might be brought against her if she admitted employment by the Communist Party or intimate knowledge of its workings."

Here, of course, if I may interpolate again, was presence with others, presence at meetings, as well as the question of intimate knowledge of the Communist Party and its workings.

Now, continuing with the *Blau* opinion:

"Whether such admissions by themselves would support a conviction under a criminal statute is immaterial. Answers to the questions asked by the Grand Jury would have furnished a link in the chain of evidence needed in a prosecution of petitioner for violation of (or conspiracy to violate) the Smith Act. Prior decisions of this court have clearly established that under such circumstances, the Constitution gives a witness the privilege of remaining silent. The attempt by the courts below to compel petitioner to testify runs counter to the Fifth Amendment as it has been interpreted from the beginning," citing among others, *Burr's Trial*, 25 Federal Cases, Page No. 14,692, decided by Chief Justice Marshall in the Circuit Court of the United States for the District of Virginia.

In the face of that decision, and while this Court holds no brief for the defendant and would feel in these days of danger to the national cause, that no one should decline to give to his government the information to enable that government perhaps even to exist, and certainly not to give aid and comfort to the enemy by remaining silent, nevertheless, in the spirit of a spread of nationalism, courts at the seat of government of the United States should be jealous to guard the individual rights of citizens to insure that even Satan himself would have a fair trial in the District of Columbia.

Therefore, having been present before a duly constituted subcommittee of the Un-American Activities Committee of the House of Representatives, who were then conducting an inquiry pursuant to the authority cited, the questions asked were pertinent; that this defendant did refuse to answer, and did refuse to answer by the force of her claim of self-incrimination; and that in line with the decisions of Justice F. Dickinson Letts in the case of *United States* vs. *Russell* and in the case of *United States* vs. *Matles*, it can be gathered from the circumstances, the background of the case, the context of the questions, that there has been shown by this defendant a reasonable apprehension of danger of prosecution by the Federal Government for a Federal law. The Court therefore concludes as a matter of fact and law that the motion for judgment of acquittal will now be granted.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. EARL RUSSELL BROWDER, Defendant.	Criminal No. 1784-50

Washington, D. C.,
March 14, 1951.

The above-entitled action came on for further trial before the Honorable F. Dickinson Letts, United States District Judge, and a jury, at 10:15 o'clock a. m.

PROCEEDINGS.

The Court: The Court is prepared to rule on the defendant's motion for judgment of acquittal.

It is charged that the defendant refused to answer the sixteen questions specified in the indictment. The defendant's responses to such questions were in some instances in the nature of objections and expressions of the defendant indicating his claim of supposed rights. The Court thinks the committee members so understood defendant's answers to such questions. A search of the record will not disclose one instance when the committee or its presiding member overruled the defendant's objections or offered to set him right, if perchance, his observations were ill founded or his position untenable in the eyes of the committee. Indeed, in large part the committee must be regarded as respecting his sincerity in the expression of his views. The Court

thinks this a very considerate and proper attitude on the part of the committee. Perhaps as many as one hundred and forty or fifty questions were propounded which were fully and freely answered by the defendant without show of pique and with no attempt to evade the consequences of the information as imparted or any possible implications.

In viewing the few instances when it is said in the indictment the defendant refused to make responsive answers, it is noticed that the record reveals nothing of an obdurate nature in the manner and demeanor of the defendant. On the contrary, he made his objections in the way of observations which seemingly were acceptable to the committee, since on no such occasion was the defendant ordered or directed to make answer. It happened when one of the questions was asked the defendant was told by the interrogator that he might refuse to answer if that was his desire.

It is clear that the defendant was called as a witness on a very narrow issue at the behest of Senator McCarthy to refute the testimony of Professor Budenz. The examination was not so limited, although it is likely the interest of the majority of the committee was kept within the scope of such purpose. Simple justice and fairness require that the examination of the defendant be appraised in the light of that setting and that it be weighed as a whole and not as unrelated pieces. The questions and answers must be seen as links in a chain. It would not become this Court nor approach our vaunted concepts of justice to submit this case to the jury on doubtful technicalities. It is revealing to note that during the course of the examination the defendant persisted in knowing the attitude of the committee concerning his position in refusing to answer the several questions with which we are now concerned. At one point in the questioning the defendant replied:

> "If you are going to make an issue of this, let's have it out as to whether I have to disclose who was present when I met with the Government delegation from China to the United Nations. If I have to testify

> about that before this committee I think it is a question which should be very seriously considered and the committee itself should take a position."

It is certain that the committee at no time announced its opinion or conclusion as to the merits of defendant's objections.

It is asserted that a condition of confusion and discord prevailed in the committee. As the Court sees this, it makes little or no difference what the fact is in that regard. The Court is not concerned with any controversy as to whether the labors of the committee were performed in good faith to effectuate the purposes of the investigation or whether there was a concerted purpose to whitewash persons whose names had been brought into the hearings as has been asserted. It is more pleasing to this Court that the issues here presented be determined upon the record unclouded by politics or other extrinsic considerations.

That the questions propounded by Senator Hickenlooper as set out in the various counts of the indictment are of doubtful pertinency to the subject of the authorized investigation becomes clear, when the remarks of the Senator at the close of his interrogation of the witnesses are understood:

> "These questions, Mr. Chairman, that I have asked have the utmost pertinency to the direct and intimate subject matter of this resolution, and I should be glad to go into the matter with the committee a little more in detail. I assure you they have a direct bearing."

The Court concludes that the Senator suspected that the other members of the committee did not understand or see the relevancy of his questions. Notwithstanding his offer to explain such pertinency to the committee, the opportunity was not afforded him to reveal his purposes. It would be an unwarranted assumption to say that the witness understood what the members of the committee could not grasp and this makes more revealing the failure of the committee to rule on the defendant's objections or otherwise to en-

lighten him as to the pertinency of the questions and to advise him as to his obligations and his rights.

The witness informed the committee that he regarded the inquiry concerning individuals as the beginning of a fishing expedition. When under examination by Senator McMahon, the witness evinced a willingness to testify concerning the persons named by Senator Hickenlooper and, indeed, did give to Senator McMahon in a substantial way the information which Senator Hickenlooper had sought.

When Mr. Browder had been excused and when Chairman Tydings had thanked him for his cooperation, the Chairman said:

> "I would like to ask Senator Hickenlooper if, in that list of names that you read, many of which I have not heard of before, there are any employees who have been in the State Department or are now in the State Department, and if he will not give me those names so that I may see if we can reach an understanding and at the same time try to keep you in the character that you say you want to remain in."

Seemingly in replying to the chairman, Senator Hickenlooper said:

> "But every one of these questions that I have asked this witness has been asked for the purpose that I believe it can lead to information in connection with the State Department activities."

This indicates that Senator Hickenlooper had in mind that the interrogation might possibly lead to information in connection with the State Department activities. In these circumstances the Court thinks that the response of Senator Hickenlooper lends support to the belief of the witness that the Senator was embarking upon a fishing expedition.

At the very end of the examination Senator Tydings in effect relieved the defendant from any obligation to answer the questions which had been propounded to him concerning

individuals, except Vincent and Service, and as to them the defendant said:

> "To the best of my knowledge and belief, they never had any direct or indirect connection with the Communist Party."

The committee owed to the defendant a show of sincerity and frankness which was withheld unless indeed it acquiesced in his claim of privilege. His objections were not acted upon and he had the right to believe that his views and explanations were acceptable to the committee.

Viewing the case in the light of the event, the attending circumstances, the declared yet uncertain purpose of the committee, the make up of the committee, the defendant himself, who he was and had been, his behavior before the committee, and the obvious and obscure mental processes of persons concerned, the Court could not permit a verdict of guilty to stand.

The Court is prepared to grant defendant's motion for a judgment of acquittal. It is so ordered.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. FRANK HASHMALL, Defendant.	Criminal No. 1752—50

OPINION OF THE COURT

The Court (Holtzoff, J.): It seems to the Court it would be helpful to recapitulate some of the basic principles regarding the constitutional privilege against self-incrimination, which is one of the time-honored and basic principles of the Bill of Rights. It was made a part of the Bill of Rights as the result of bitter experience known to the Founding Fathers and to the Members of the First Congress which submitted the Bill of Rights for ratification as part of the Constitution.

I refer to the experience in England during the period when many persons were oppressed in connection with criminal prosecutions and were required to incriminate themselves if the authorities saw fit to take that course.

We cannot minimize this constitutional privilege for the sake of obtaining information in any particular instance, no matter how important it is to obtain that information.

The applicable principles in construing and applying the privilege of self-incrimination is that no one can be required to furnish evidence which would tend to convict him of a crime. That privilege, however, is not limited to the specific question as to whether the witness committed a specific crime. It would not be of very much value if it were so limited. And the courts since the day of the decision

by Chief Justice Marshall in the Aaron Burr case have so recognized.

The privilege applies to an endeavor to secure information which would lead to information which would cause a conviction of the witness of some criminal offense. For example, obviously a witness could refuse to answer the question: "Did you commit such and such a murder?" But he could also refuse to answer the question: "Were you at such and such a place at such and such a time?" because that question might place him at the place where the murder was committed, at the moment it was committed, and thereby be a step toward securing his conviction.

The question as to whether a person is a member of the Communist Party, I think is within the privilege, because it was held in the Communist case in New York that the Communist Party or the active members of the Communist Party are a conspiracy to overthrow the Government by force and violence, and that is a criminal offense. So, to ask a person whether he is a member of the Communist Party might lead to securing evidence which would convict him of a conspiracy with others to overthrow the Government.

Of course, the question on its face must appear to be such as would indicate some basis for the assertion of the privilege. The assertion of the privilege must be within reason. A question which is obviously innocuous must be answered.

For example, to ask a person's name and address would not be within the privilege. But if there is any reasonable possibility that one answer or the other might tend to disclosure of incriminating evidence against the witness, it is the witness' choice whether to answer the question or not. As Chief Justice Marshall indicated, the witness cannot be required to disclose his reasons for asserting the privilege, because in doing so he might have to disclose the very information which he has a right to withhold.

This brings me to the specific counts of this indictment. I will first take up Count V.

The question in Count V is: "Whether the defendant testified as a witness for the defendants in the trial referred to in Counts III and IV as to what the Communist Party in the United States stood for and so testified from defendant's own knowledge because of his membership in the Communist Party."

An answer "Yes" would mean that the defendant testified as to what the Communist Party stood for because of his membership in the Communist Party. It would be an admission that he was a member of the Communist Party. He has a right to refuse to make that admission under the Constitution.

Now I go back to Counts III and IV. Counts III and IV involve questions that on their face are perfectly innocuous, and it would have been perhaps better policy if he had answered them. Each of them asks whether he gave certain testimony in the trial of the eleven Communists in New York.

If they stood alone, I would find the defendant guilty of those counts, because obviously he could not possibly incriminate himself by answering either yes or no. However, it is necessary to read these questions in the context in which they were asked.

The defendant, before these questions were asked, had refused to answer whether he was at that time a member of the Communist Party. He refused to answer this question on the ground that to answer it might tend to incriminate him. Admittedly he had the right to assert his privilege, and no contempt of Congress is charged as to that question.

Then a series of questions followed to either induce him to answer that basic question, or else to ascertain why he chose to assert the privilege.

Of course an interrogating tribunal, once the privilege has been asserted, does not have a right to interrogate the witness as to why the privilege is being asserted, because, as has already been said, that might require disclosure of the very information which the witness has a right to withhold.

In the course of these supplemental questions apparently propounded for the purpose of inducing the defendant to answer the question, or in the alternative to get more details as to why he chose to assert his privilege, he was asked a number of questions among which were the questions: Well, didn't you testify so and so at the trial of the eleven Communists? And didn't you testify so and so at that trial? That is the substance of Counts III and IV.

I think in the light of the context he had a right to stop. And when he asserted his privilege and declined to answer the basic question, he had a right to decline to answer any supplemental questions which were directed at him in an effort to induce him to change his attitude in respect to the privilege, or else to ascertain why it was that he was asserting it, or to demonstrate to him that it was foolish for him to assert the privilege.

The Court finds the defendant not guilty.

SUPPLEMENT II

Testimony of Thomas J. Fitzpatrick Before House Un-American Activities Committee— August 10, 1949

After the statement appearing in the text, *supra*, p. 17, counsel for the Committee asked Mr. Fitzpatrick the following question (at p. 602):

> "Mr. Fitzpatrick, are you now or have you ever been a member of the Communist Party?" [1]

The following colloquy then ensued (at p. 603):

> "Mr. Fitzpatrick: Mr. Chairman in my opening remarks I gave quite a bit of my attitude on this question. I say that this Committee has no right to pry into my mind.
>
> "Mr. Woods: We are not concerned with your opinion of the committee. We have asked you a simple question. Do you want to answer it or not?
>
> "Mr. Fitzpatrick: I am answering it, Mr. Chairman.
>
> "Mr. Wood: We don't have the time for a long dissertation.
>
> "Mr. Fitzpatrick: I think I have a right to answer it in my own way.
>
> "Mr. Wood: The question can be answered 'Yes' or 'No', or you can decline to answer it.
>
> "Mr. Fitzpatrick: Being just a common workingman, I will answer it in my own words. I don't think the committee has the right to dictate the choice of my words in answering it.
>
> "Mr. Wood: We are not attempting to do that. You may answer or decline to answer.
>
> "Mr. Fitzpatrick: I will answer the question. The Constitution guarantees the right to me and every other citizen to have beliefs, whether they are popular or unpopular, and to keep them to themselves if they see fit, and I have no intention of being a party to weakening or destroying that protection in the Con-

[1] Count One of the indictment.

stitution. I feel when I take this position that I am one of the real Americans, and not like some of the phonies who appear here.

"Mr. Wood: Now will you answer the question?

"Mr. Fitzpatrick: I have answered the question.

"Mr. Wood: It is not an answer at all.

"Mr. Fitzpatrick: That is my answer.

"Mr. Wood: Do you mean that is the only answer you are going to give?

"Mr. Fitzpatrick: That is the way it has to be answered, according to my conscience.

"Mr. Wood: Is that the only answer you will give the question whether you are now or ever have been a member of the Communist Party?

"Mr. Fitzpatrick: That is the only answer I can conscientiously give you.

"Mr. Tavenner: Mr. Fitzpatrick, you were present yesterday during the testimony here. You heard it stated under oath that you are a member of the Communist Party. Do you deny that accusation?[2]

"Mr. Fitzpatrick: The answer to my previous question is the answer to this question. I have no intention of permitting this committee to abridge my constitutional rights on political opinions, associations, who I work with, who I meet with, what I read or think, or anything of that kind.

"Mr. Tavenner: So, in other words, you refuse to answer the question?

"Mr. Fitzpatrick: I don't refuse to answer the question. I have answered the question."

Thereupon, Mr. Fitzpatrick was again asked whether he had solicited an individual to join the Communist Party.[3] The following colloquy then ensued (at pp. 604-605):

"Mr. Fitzpatrick: Mr. Chairman, if you want to ask me questions about my actions of loyalty, question my loyalty, you have a right to do so and I will answer them. So far as my political opinions, I have stated my position on that. You are asking the same ques-

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[2] Count Two of the indictment.

[3] Count Three of the indictment.

tion in a different way. But if my memory is right, there was no such thing as a Communist Party when that affidavit is supposed to have been.

"Mr. Tavenner: In 1943?

"Mr. Fitzpatrick: I think it was the Communist Political Association then.

"Mr. Tavenner: Was it the Communist Political Association, then, that you tried to get him to join?

"Mr. Fitzpatrick: I have given you my answer.

"Mr. Tavenner: In other words, you will not answer whether you did or did not solicit his membership? [4]

"Mr. Fitzpatrick: I will not talk about my associations and actions with people who I know, what I did, or anything else. I don't think it reflects on my loyalty or disloyalty or anything else.

"Mr. Wood: Mr. Fitzpatrick, did you ever at any time during the year 1943 furnish an application blank and request Clarence D. Copeland to sign and make application for membership in the Communist Political Association or the Communist Party? [5]

"Mr. Fitzpatrick: Mr. Chairman, do I have to give you my answer again?

"Mr. Wood: I just want to know whether you did that one thing.

"Mr. Fitzpatrick: I say if I did or if I did not, regardless of what I did, it is not the affair of this committee to pry into this kind of action.

"Mr. Wood: And for that reason do you decline to answer the question?

"Mr. Fitzpatrick: I stand on the protection of the Constitution, the first and fifth amendments.

"Mr. Wood: And for those reasons decline to answer the question further?

"Mr. Fitzpatrick: I have answered the question.

"Mr. Wood: I say, do you decline to answer it further?

"Mr. Fitzpatrick: I have no further comment on it.

"Mr. Tavenner: Were you a candidate for political office in the State of Pennsylvania in 1948? [6]

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[4] Count Four of the indictment.

[5] Count Five of the indictment.

[6] Count Six of the indictment.

"Mr. Fitzpatrick: Mr. Chairman, for the reasons that I have reiterated more than once, this committee is going beyond its powers to delve into any of my political activities, thoughts, or anything else.

"Mr. Tavenner: Were you endorsed for office by the Daily Worker, the official organ of the Communist Party?[7]

"Mr. Fitzpatrick: I don't know who endorsed who or for what. I have no intention of discussing my political actions or activities with this committee, for the reasons that I have stated before.

"Mr. Tavenner: The Daily Worker of May 25, 1947, page 9, lists you as the signer of a statement sponsored by the Civil Rights Congress opposing attacks on communism. Are you a member of the Civil Rights Congress?

"Mr. Fitzpatrick: I say it is no affair of the committee what organizations I belong to. The previous answer applies.

"Mr. Tavenner: In other words, Mr. Fitzpatrick, you are just determined that you are not going to give any testimony before this committee regarding Communist activities in union 601?

"Mr. Fitzpatrick: I came here and I stated that if you have any questions about any actions that I have committed, I will answer. So far as my beliefs, my political activities, my associations, affiliations, what I read, those are rights guaranteed to me and every other citizen of this Nation.

"Mr. Wood: That is about the fourth time you have repeated that, Mr. Fitzpatrick. You can simplify that and save time by saying on the grounds you have previously given you refuse to answer.

"Mr. Fitzpatrick: Mr. Chairman, if you will talk to your counsel and ask him not to ask the same question in six or seven different ways, he wouldn't be getting six or seven identical answers.

"Mr. Wood: I don't mind getting six or seven identical answers, but I don't like to have six or seven repetitions of grounds for refusing to answer. Do you intend to answer the question or not? If you don't want to answer it you can decline to answer for reasons you have already given.

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[7] Count Seven of the indictment.

"Mr. Fitzpatrick: I know time is short, and I don't want to take up your time more than anybody else. Mr. Chairman, advise your counsel not to repeat the question.

"Mr. Wood: The only way we can seek information is to ask for it.

"Mr. Fitzpatrick: The only way I can answer a question is to answer it when it is asked.

"Mr. Wood: That is your answer?

"Mr. Fitzpatrick: Yes.

"Mr. Tavenner: I have no further questions, Mr. Chairman."

At the close of his testimony, the following colloquy ensued between the witness and Representative Moulder (at p. 607):

"Mr. Moulder: You say you will answer questions about any acts you have committed.

"Mr. Fitzpatrick: That is right.

"Mr. Moulder: Don't you feel the Congress of the United States has a right to interrogate people as to their beliefs and what is their hope for the future in those beliefs?

"Mr. Fitzpatrick: I think the Congress has no such rights, and I think if you will read the Constitution you will see that. Do we have thought control in the United States now? Are you going to convict people on thinking? I think maybe you fellows should read that Constitution.

"Mr. Moulder: That is what you have to do to be a good constitutional lawyer, just read the Constitution."

Testimony of Frank Panzino Before House Un-American Activities Committee— August 10, 1949

"Mr. Tavenner: Have you at any time attended a Communist Party meeting with Tom Fitzpatrick?[8]

"Mr. Panzino: Mr. Chairman, I again refer to my original remarks.

"Mr. Wood: That is all right, but don't refer to them too much. Let's just answer the question.

"Mr. Panzino: The first amendment to the Constitution of the United States, I believe——

"Mr. Wood: Please concede the committee has some knowledge of the Constitution. I don't like to be lectured about what the Constitution provides. Some members of the committee have some faint knowledge of what the Constitution provides, perhaps as much as the witness. Did you attend a Communist Party meeting with Fitzpatrick? That is the question.

"Mr. Panzino: Under the first amendment to the Constitution, which guarantees the right to assembly, I believe that answers the question counsel has asked.

"Mr. Wood: Do I understand you invoke the Constitution as a reason for not answering further?

"Mr. Panzino: I have answered the question.

"Mr. Wood: I will ask you the question myself, and I want a forthright answer or a declination to answer. Have you at any time ever attended a Communist Party meeting with Tom Fitzpatrick?[9]

"Mr. Panzino: Mr. Chairman, I again refer you to the first amendment.

"Mr. Wood: I don't want to be referred to it.

"Mr. Panzino: I have answered the question.

"Mr. Wood: Have you attended such a meeting?

"Mr. Panzino: I have attended many meetings, at my church——

"Mr. Wood: We are not asking you about churches.

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[8] Count One of the indictment.

[9] Count One of the indictment.

"Mr. Panzino: Any meeting I may have attended is my own personal business and my right guaranteed to me under the Constitution of the United States.

"Mr. Wood: Certainly nobody disputes that, but as a matter of fact, did you attend such a meeting?

"Mr. Panzino: I have answered the question to the best of my knowledge.

"Mr. Wood: Let me ask you this: Do you know whether or not you attended such a meeting?

"Mr. Panzino: Mr. Chairman, evidently you asked the question and you want to answer it.

"Mr. Wood: I want you to answer it.

"Mr. Panzino: I have answered it, Mr. Chairman.

"Mr. Harrison: Is that your complete answer?

"Mr. Panzino: That is right.

"Mr. Tavenner: You have spoken of the rights under the Constitution. What do you consider would become of the Constitution if the Communists should gain control in this country?

"Mr. Panzino: I think again, Mr. Chairman, under the fifth amendment, that is my own personal belief. I think there are enough laws in this country to take care of any subversive activities within the Nation.

"Mr. Wood: Do you consider communism as a subversive activity?

"Mr. Panzino: Again I say that what I think is my own business. I will answer that among my friends, my union members, and not——

"Mr. Wood: To this committee?

"Mr. Panzino: To somebody, whether it be this committee or any outside organization, that is trying to destroy the constitutional rights of the American workers.

"Mr. Tavenner: Have you attended Communist Party meetings with Charles Copeland?[10]

"Mr. Panzino: Mr. Chairman——

"Mr. Wood: If you desire to give the same answer you have given to other questions, you may do so.

"Mr. Panzino: I have answered the question.

"Mr. Tavenner: Are you now, or have you ever been, a member of the Communist Party?[11]

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[10] Count Two of the indictment.

[11] Count Three of the indictment.

"Mr. Panzino: Again I say that I have answered the question in my preliminary remarks.

"Mr. Wood: And that is the only answer that you desire to give?

"Mr. Panzino: That, I believe, is the correct answer to give. That is defending the Constitution of the United States.

"Mr. Wood: I asked if that is all the answer you will give?

"Mr. Panzino: I say I have answered the question.

"Mr. Tavenner: Mr. Chairman, I see no value in going into other questions."

Testimony of James J. Matles Before House Un-American Activities Committee— December 5, 1949

The following portions of the record contain the refusals to answer which resulted in the indictment agair t Mr. Matles:

"Mr. Tavenner: Are you acquainted with Esther Tice?[12]

"Mr. Matles: Mr. Chairman, I have listened to Mr. Emspak's testimony, and I am sure you are trying to save time. I do not propose to discuss here my associations or my political affiliations, under the guaranties given to me by the first and fifth amendments to the Constitution, and I am going to try to save as much time for you as I can.

"Mr. Tavenner: You a.e rather jumping to conclusions, I think.

"Mr. Matles: I get it from what you have said that you are trying to save time, so I am helping you along.

"Mr. Tavenner: I am not asking you about the political affiliations of Esther Tice.

"Mr. Matles: I don't want to discuss my associations.

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[12] Count One of the indictment.

"Mr. Tavenner: No matter what type of business associations they may be in the affairs of the union, you will not discuss them?

"Mr. Matles: That is right, because I studied the testimony before this committee, and I find you are trying to use witnesses as finger men.

"Mr. Tavenner: Where is Esther Tice employed?[13]

"Mr. Matles: I have answered that question.

"(Witness confers with his counsel.)

"Mr. Matles: Mr. Chairman, may I have a minute on this question?

"Mr. Tavenner: You mean to consult with counsel?

"Mr. Matles: No, I have consulted with counsel and desire 1 minute to clarify my point of view.

"Mr. Moulder: Very well.

"Mr. Matles: The purpose of this hearing was announced by a representative of this committee, and that was to investigate the activities of officers of the union who have complied with the Taft-Hartley law. As we have known this committee for 12 years, the only reason you would assign yourself such police functions would be to frame us up and smear our organization. I feel Mr. Murray and Mr. Carey had something to do with persuading you to hold these hearings.

"Mr. Moulder: I think you are wrong about that. I don't know either of them. Do you refuse to answer the question?

"Mr. Matles: I have given the basis for answering the question the way I did.

"Mr. Tavenner: Which, of course, is no answer at all.

"Mr. Moulder: You can give any explanation you wish, but don't make a speech.

"Mr. Matles: Do you really think I made a speech, Mr. Congressman?

"Mr. Moulder: Proceed.

"Mr. Tavenner: Mr. Matles, have you ever been a member of the International Workers Order?[14]

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[13] Count Two of the indictment.

[14] Count Three of the indictment.

"Mr. Matles: I have answered that question.

"Mr. Tavenner: When?

"Mr. Matles: Just before.

"Mr. Tavenner: What is it? Were you or were you not?

"Mr. Matles: I will not discuss my affiliations, my associations, or my political beliefs, on the grounds I stated before.

* * * * * *

"Mr. Tavenner: In 1933 you were an organizer for the Steel and Metal Workers Industrial Union, were you not?[15]

"Mr. Matles: My answer is the same.

"Mr. Moulder: You refuse to answer for the reasons stated, that it violates your rights provided under the Constitution?

"Mr. Matles: That is right.

"Mr. Moulder: What are those provisions, do you know?

"Mr. Matles: I believe the first and fifth amendments.

"Mr. Moulder: In what respect do they justify your refusal to answer the question?

"Mr. Matles: I am so advised by counsel.

"Mr. Scribner: I will be happy to give the basis for that if you wish, Mr. Congressman.

"Mr. Tavenner: Was James Lustig also employed as an organizer for the Steel and Metal Workers Industrial Union at the same time you were?[16]

"Mr. Matles: My answer is the same.

"Mr. Tavenner: Mr. Matles, I show you a copy of the Daily Worker dated November 6, 1933, and point out to you that on page 2 under the heading 'Thirty-eight workers organizations endorse Communist Party program' your name appears as Secretary of the Steel and Metal Workers Industrial Union, along with that of James Lustig, as organizer of the Steel and Metal Workers Industrial Union. This article states:

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[15] Count Four of the indictment.

[16] Count Five of the indictment.

"'Only the Communist Party as the party of the working class represents the interests of the entire working population, stands squarely on the principle that the provision of adequate food, clothing, and shelter and the defense of the rights and living standards of the workers are the primary issues in the campaign.'

"I show you that article and ask if you still subscribe to that statement?[17]

"Mr. Matles: Mr. Chairman, I have on many occasions discussed this subject before other congressional committees. I do not care to discuss it before this committee.

"Mr. Moulder: You refuse to answer?

"Mr. Matles: For the reasons I have previously given, I will not discuss my views, my affiliations, or my associations."

Thereafter the witness refused to answer approximately seven questions for the reasons given in the answers quoted above. The refusal to answer one of these seven questions forms the basis of Count Seven of the indictment.

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[17] Count Six of the indictment.

Office Supreme Court, U. S.
FILED
DEC 11 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. [redacted] 9

JULIUS EMSPAK

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 67

JULIUS EMSPAK,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR PETITIONER

Opinions Below

The opinion of the Court of Appeals (R. 353-363) is reported at 203 F. 2d 54. The opinions of Judge Kirkland (R. 116-131) denying certain pre-trial motions filed by petitioner and fifteen other individuals who were indicted for contempt of Congress appear at 95 F. Supp. 1010, 1012. The opinion of Judge Letts (R. 224-227) rendered at the conclusion of the trial and holding petitioner guilty is unreported.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1254. The petition for a writ of certiorari was granted on October 12, 1953 (R. 371).

Statutes, Resolutions and Rules Involved

1. 2 U. S. C. 192, R. S. 102, as amended, provides:

> "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

2. Rule XI(1)(q)(2) of the Rules of the House of Representatives, as amended by Section 121(b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 828, and thereafter adopted by the House of Representatives (H. Res. 5, 81st Cong., 1st Sess., 95 C. R. 10 (1949), provides:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

"For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member."

The language in the amendment of Rule XI by the Legislative Reorganization Act is substantially the same as the House resolution which initiated and continued the House committee in effect until the establishment of the present committee.[1]

Statement

1. The proceedings before the subcommittee of the House Committee on Un-American Activities

Petitioner, Julius Emspak, is the General Secretary-Treasurer of the United Electrical, Radio & Machine Workers of America (R. 160) (hereafter referred to as UE

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[1] H. Res. 282, 75th Cong., 3d Sess., 83 C. R. 7568, 7586 (1938); H. Res. 26, 76th Cong., 1st Sess., 84 C. R. 1098, 1128 (1939); H. Res. 321, 76th Cong., 3d Sess., 86 C. R. 572, 605 (1940); H. Res. 90, 77th Cong., 1st Sess., 87 C. R. 886, 899 (1941); H. Res. 420, 77th Cong., 2d Sess., 88 C. R. 2282, 2297 (1942); H. Res. 65, 78th Cong., 1st Sess., 89 C. R. 795, 810 (1943); H. Res. 5, 79th Cong., 1st Sess., 91 C. R. 10, 15 (1945); H. Res. 5, 80th Cong., 1st Sess., 93 C. R. 38 (1947).

or the Union), a national labor union representing employees in the electrical, radio and machine industry. He appeared on December 5, 1949, before a one-man subcommittee of the Committee on Un-American Activities of the House of Representatives consisting of Representative Morgan M. Moulder (R. 159, 239). The hearings in which petitioner testified were subsequently printed by the committee and are contained in a pamphlet entitled, *Hearings Regarding Communist Infiltration of Labor Unions—Part II (Security Measures Relating to Officials of the UERMWA-CIO)*, 81st Cong., 1st Sess. (R. 37).

During the course of the hearings petitioner was asked 239 questions. Some of these questions dealt with the union office held by petitioner, his background, the structure of the Union, the extent of its membership and bargaining commitments, the number of its organizers, the manner of their appointment, the composition of the Executive Board, the number of the Union's international representatives and their duties, the duties of the Union's Executive Committee, the manner in which grievances are adjusted, the official publication of the Union, the alleged similarity in policy between the Union publication and the Communist Party, the signing by petitioner of a non-Communist affidavit which was filed with the National Labor Relations Board, and related matters. The witness answered all of these questions (R. 159-199).

Included within the 239 questions which petitioner was asked were a series of 68 questions which gave rise to counts 1-68 of the indictment (R. 4-13). Declining to answer these questions, petitioner pleaded the First Amendment rights of free speech and free assembly and the Fifth Amendment. Relevant portions of the record are set out in the margin.[2] Of these 68 questions, some 58 sought from

[2] "Mr. Tavenner. Mr. Emspak, are you acquainted with Joseph Persily?

Mr. Emspak: Mr. Chairman, I would like to say something at this point.

(Footnote Continued on Page 5)

petitioner information as to the identity of and his acquaintance with certain named individuals (R. 4-12). Two counts in the indictment (counts 59 and 60) were based upon petitioner's refusal to answer questions concerning

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(Footnote Continued from Page 4)

Mr. Moulder. You mean in response to the question?

Mr. Emspak: I will answer the question; yes, in response to the question and as a statement of position.

What I say revolves around two points, one organizationally and another as an individual. Organizationally, my job as an officer of this union is to represent the interest of the membership as they determine it at the annual conventions and at other means they have of getting together and expressing themselves. My job is to administer that aspect to the best of my ability, using one very simple measuring stick, and that is: Does a given policy or action contribute to the well-being of the membership, individually and collectively?

As an individual I would like to say one thing, and that is this: The line of questioning that counsel is developing now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am——

Mr. Moulder: How long will this statement take, Mr. Emspak?

Mr. Emspak: About two or three more minutes.

Mr. Moulder: Proceed.

Mr. Emspak: Everything I am, I owe to the rich heritage and tradition of this country. I do not believe that a committee of this kind, especially in view of the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country, too.

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Mr. Emspak: Because of my interest in what is going on these days, because of the activities of this committee——

Mr. Moulder: Are you going to answer the question?

Mr. Emspak: Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the First Amendment, supplemented by the Fifth. This committee will corrupt those rights.

Mr. Moulder: Do you think it corrupts you to answer the question?

(Footnote Continued on Page 6)

his affiliation with two organizations, the National Federation of Constitutional Liberties and the Civil Rights Con-

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(Footnote Continued from Page 5)

Mr. Emspak: I certainly do.

Mr. Moulder: Why does it corrupt you?

Mr. Emspak: Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country" (R. 167-169).

Petitioner was then asked similar questions about other individuals, to which he replied (R. 171-172):

"Mr. Emspak: Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee. I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

Mr. Moulder: Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

Mr. Emspak: No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——

Mr. Moulder: Do you know them or not?

Mr. Emspak: That does not concern this committee at all.

Mr. Moulder: Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. Emspak: No. I don't think this committee has a right to pry into my association. That is my own position."

To several questions designed to probe the truthfulness of the affidavit which petitioner had filed pursuant to the provision of Section 9(h) of the Taft-Hartley Act (R. 194; Count 64 of the indictment, R. 12), he responded:

> "I understand an affidavit to be an affidavit, a document that is binding when one undertakes to subscribe to it. I further understand what the motives of this committee are, to establish a beautiful frame to hang people who try to comply with the law. O.K. The affidavit is binding, and that is that!"

gress (R. 12). The remaining counts in the indictment (61-68) are based upon the petitioner's refusal to answer certain questions with respect to his alleged membership in the Communist Party (R. 12-13).

After petitioner twice protested the interrogation and stated the reasons for his protests (R. 167-169, 171-172), the committee did not rule that his objections were ill-taken or his reasons for declining to answer unsound. It continued to ask questions concerning other associations (R. 172; Counts 7-58 of the indictment), to which petitioner responded only by adopting his earlier answer "for the reasons stated" (R. 172). The committee did, however, state on the record its reasons for persisting in the questioning. Thus, when petitioner, after a substantial number of questions had been asked and answered, first declined to answer a question and gave his reasons for such refusal, the committee responded (R. 169):

> "The purpose of this committee is to expose communism as it exists in this country."

At another point in the hearing the chairman stated (R. 191), "It is the function of this committee to expose communism and un-American activities." "Don't you believe that the rank and file of any union should have knowledge of communistic activities within the union, and should have an opportunity to be so informed, and that this committee is performing a service when it does so expose such communistic activities within a union" (R. 192). "We feel it is the duty of this committee to protect labor unions against Communist infiltration, and that we will try to do" (R. 195-196).

Petitioner, together with fifteen other individuals, was indicted for violation of Section 192 of Title 2, United States Code, by a grand jury impaneled on October 3, 1950 (R. 4-13, 116-120; 95 F. Supp. 1010, 1012). Of the sixteen individuals thus indicted, the following in addition to peti-

tioner are officials or members of the Union: Thomas J. Fitzpatrick, Thomas Quinn, James J. Matles, Frank Panzino, Talmadge Raley, Esther Tice. Of these seven individuals, two, petitioner and Thomas Quinn,[3] were found guilty of contempt.

The citations for contempt of the seven individuals resulted from three separate groups of hearings before subcommittees of the committee. The first series of hearings was held before a subcommittee of the House committee on August 9, 10 and 11, 1949. Two officials of the Union, Thomas J. Fitzpatrick and Thomas Quinn, appeared at these hearings and were cited for contempt.[4]

At the second group of hearings, held on December 5 and 6, 1949, to which reference has already been made, petitioner testified, as did James J. Matles, the Union's Director of Organization. The third Un-American Activities Committee hearings involving the Union were held from July 12 to 15, 1950.[5] As a result of their appearance at these hearings, Talmadge Raley and Esther Tice were indicted.

2. The proceedings below

On December 17, 1950, petitioner filed a motion to dismiss the indictment. The grounds of this motion included the contentions that the questions asked exceeded the bounds of legislative inquiry and were not pertinent to any question properly under inquiry by the committee; that the statutory provision invoked by the indictment inherently and as applied exceeded the bounds of the constitutional power of

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[3] See *Quinn* v. *United States*, No. 66 this Term, petition for writ of certiorari pending.

[4] 1 *Infiltration—Labor Unions* (1949).

[5] *Cincinnati, Ohio, Area* (1950). A fourth series of hearings involving the Union was held on August 29, and 30, 1950. See 3 *Infiltration—Labor Unions* (1950).

investigation; that this statutory provision and House Resolution 5, inherently and as applied, are violations of the First Amendment, are unconstitutionally vague and violate the constitutional privilege against self-incrimination (R. 14-15).

An affidavit in support of the motion to dismiss which the government did not controvert charged that all of the three hearings in which the Union, its officers and its members were involved are unified and condemned by an exertion of unconstitutional powers and by "objectives totally unrelated to the legitimate legislative business of the committee or the House of Representatives" (R. 18). It charged that the hearing of August 9, 1949, had "the objective of interfering with and influencing the outcome of a local union election then pending in Pittsburgh, Pennsylvania" (*ibid.*), and that the purpose and timing of this hearing was determined after consultation with and to give support to an inner union clique; that the hearing which gave rise to the instant case had as its actual objective an attempt "to disclose a possible violation of Section 80 of the Criminal Code for false statements made in the so-called Taft-Hartley non-Communist affidavits" (R. 21), and that the third hearings of July 1950 were held in order to serve as a privileged forum for a series of partisan anti-labor articles, and that the entire questioning of one of the witnesses, a union member, was based upon a document, subsequently admitted to be a forgery by a committee member (R. 21-24). A second affidavit, filed by petitioner (R. 29-36), charged that on the day after he had received a subpoena the *New York Times* published a report, based upon a committee release, that the committee "was looking into the validity of non-Communist affidavits filed by officers" of the Union (R. 30, 39), that petitioner had been accused of being a Communist and individuals concerning whom he had been interrogated had been so accused (R. 30-32, 35).

On January 31, 1951, Judge Kirkland ruled that the counts involved in the instant indictment as well as several other indictments with which he dealt simultaneously, "apparently on their face were directed to one single line of inquiry which was a specific phase of inquiry then being considered by the committee" (R. 119, 125; 95 F. Supp. 1012, 1016). This "single line of inquiry" was the "exposure" of Communists.[6]

After a trial without a jury before Judge Letts, the petitioner was found guilty of contempt as charged (R. 227) and sentenced to imprisonment for a period of six months and a fine of $500 (R. 233).

After an appeal was argued in October 1951 before the judges of the lower court, reargument was *sua sponte* ordered before the court *en banc*. After reargument in May 1952, the Court of Appeals on December 19, 1952, handed down its opinions. The opinion of the court was written by Judge Clark for himself and Judges Miller and Proctor. A concurring opinion was written by Judge Prettyman for himself, Chief Judge Stephens and Judge Washington. Judge Bazelon dissented for himself and Judge Edgerton, while Judge Fahy concurred in part and dissented in part.[7]

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[6] The committee chairman stated as much (R. 169, 191, 195-196), both with respect to the instant hearing as well as with respect to the hearing involved in *Quinn* v. *United States*, *supra*, of which the instant hearing was stated to be a continuation (R. 157).

[7] Some of the issues were further discussed in *Quinn* v. *United States*, 203 F. 2d 20, and *Bart* v. *United States*, 203 F. 2d 45, cases in which petitions for writs of certiorari are now pending in this Court.

Summary of Argument

This case comes to the Court at a time when the freedoms protected by the First Amendment are at their lowest ebb. Consistent retreats in the enforcement of First Amendment rights have removed barriers to a spreading wave of repression. Security has been mechanically exalted and the claims of the Constitution pushed aside. At a time when we proclaim to the world our dedication to freedom we are unfree as never before.

This case lies at the heart of any answer to the question, how are we to recover our rapidly vanishing liberties. For it is the House Committee on Un-American Activities and its resolution which have contributed more heavily than any one law or governmental agency to our present plight. It is the committee which has fostered the present climate of fear, intimidated all forms of political expression, popularized the political test oath and undermined the right of assembly. It is the committee which has reversed the traditional role of the federal government as a guardian against the invasion of the civil liberties of local individuals and groups. It is the committee which has contributed heavily to making the issue of communism a barrier to the solution of the political problems which confront us.

The committee has broad and indeed unprecedented powers. The resolution creating it deals solely and exclusively with propaganda. The resolution's operative terms refer solely to propaganda. If propaganda were substracted from the resolution there would be nothing left.

The fact that Congress singled out in this resolution speech alone for investigation must be deemed to be a deliberate act, for the distinction between speech and conduct is a basic one in our public law. The fact that the

resolution has as its subject matter the dissemination of ideas means that the resolution must comply with the standards of the First Amendment. We have not yet reached the point where speech alone, unrelated to any substantive evil, can serve as the basis for congressional action. The resolution invades freedom of expression in an important way since the committee exercises its jurisdiction by labelling certain ideas in the light of the standards of the resolution.

But the resolution really has no standards. The term "un-American" is merely an epithet with no fixed content. The same is true of the term "subversive." The third kind of propaganda which the committee is authorized to investigate is propaganda which "attacks the principle of the form of government as guaranteed by our Constitution." This phrase suffers from comparable ambiguity. See *Schneiderman* v. *United States*, 320 U. S. 118, 138, 144, 145. It is characteristically used to lend prestige to movements in opposition to economic change or political reforms. Certainly, a basic principle of our form of government is freedom of thought and of political affiliation and expression. The record of the committee itself establishes the danger of this phrase as a tool for classifying ideas. The committee, through its counsel, once sought to investigate an organization because its literature referred to "democracy," a term which was alleged to be inconsistent with the provisions of the Constitution.

The legislative background and committee interpretation of the terms of the resolution are not helpful in limiting its scope. When the resolution was initially passed in 1938, members of Congress unsuccessfully sought to have its meaning defined. The members of the committee themselves in 1940, during the debate on the reenactment of the resolution were in conflict on the meaning of the term "un-American." And in 1942 a minority report of the committee complained of the majority's tendency to brand as subversive and un-American viewpoints which it disapproved.

In 1945 the committee sought aid from a private institution in interpreting the resolution. Its own interpretations of the term "un-American" have included such standards as the denial of the existence of a God, absolute social and racial equality, destruction of private property, advocacy of a planned economy and opposition to the system of checks and balances. In 1946 the chief counsel for the committee wrote that it had adopted no definition of subversive or un-American activities.

That the Court has under review a resolution the scope of which is neither defined or definable is seen from the fact that the committee itself recognizes no limitations on the permissible range of its activities.

The unconstitutional range of the resolution is best seen from the committee's application of it in its day to day functioning. In the course of hearings the committee, or various of its members, has characterized as "un-American" such programs and issues as the legislation proposing the reorganization of this Court, criticism of itself, of members of Congress, of the FBI, and support of New Deal legislation. In the same way, belief in the extension of universal suffrage, support for Harry Bridges, advocacy of anti-polltax legislation and criticism of the McCarran-Walter Immigration Act have been characterized as evidence of subversion. The resolution has been applied in these ways to a wide variety of occupational groups, many of whom function through the exercise of First Amendment rights, sometimes on a wholesale geographical basis.

It cannot be doubted that only the personal prejudices and private interests of the committee members serve as limits to the scope of the resolution.

The resolution on its face is constitutionally invalid because it takes as its target the circulation of ideas. As it has been consistently construed, it abridges the kind of speech, public discussion and political expression, which is of key importance in our constitutional system. *DeJonge*

v. *Oregon*, 299 U. S. 353. Special considerations contribute to the unconstitutionality of the resolution. These are its vagueness and its breadth. The vagueness of the resolution makes it a formidable threat to the freedom of expression; the broad scale of its terms insures that such threat will penetrate and impair an almost limitless range of public expression. If the resolution has a legitimate goal, it is fatally broad. The number of the innocent victims of the resolution far outweighs the benefits which may be speculatively ascribed to it. This Court has never had a case before it which more imperatively calls for the invalidation of legislation on its face than does this resolution.

The resolution cannot be limited so as to confine it to constitutional inquiries. The history of its application makes this clear. Moreover the resolution contains no standards which would be useful in narrowing its scope.

A possible ground of support for the resolution is that the time has come when public discussion of dangerous ideas must be suppressed. But the justification of security cannot change the fact that under our government the people are trusted to choose for themselves, even where the issues are extremely grave. Nor may the resolution be justified by treating the ideas denounced in it as punishable per se in the same manner as slander or obscenity. This is impossible under our political system.

The fact that speech is not punished outright as by fine or imprisonment does not spare the resolution. The committee is authorized to censor and the fact is that the committee's investigations restrict speech as well as the freedom to speak.

The cases supporting the resolution rely heavily upon the view that the First Amendment does not limit the power of inquiry, but this Court's decision in *United States* v. *Rumely*, 345 U. S. 41, disposes of this notion as it does of the notion that the possibility of the production of valid legislation is a sufficient compliance with the test of con-

stitutionality. Although we doubt that valid legislation can emerge from an exercise of the committee's jurisdiction, that test is particularly inappropriate for this resolution. It would strain language and history to ignore the fact that the resolution basically has no legislative purpose. The congressional act authorizing the exercise of the power of inquiry must conform to the First Amendment rather than resulting legislation which it is not the primary purpose of the resolution to produce.

II

A study of the record of the committee's activity confirms in detail what has been said with respect to the vagueness and range of the resolution. An analysis of the committee's hearings, reports and other relevant documents establishes that the uniquely distinguishing characteristic of the committee's functioning is a system of exposure which contributes new elements of unconstitutionality to the resolution. The committee does not investigate in aid of legislation but engages in a form of ideological warfare against people and associations. This program of mass persecution contemplates a deliberate destruction not only of the civil liberties of persons and organizations, but also of the personal rights and interests of the witnesses called before the committee.

The hallmark of the committee's functioning on which we lay great stress in this brief is the fact that the committee is an instrumentality for attacking individuals and this not as an incident to some ultimate legislative purpose, nor as a means of identifying sources of propaganda, but as an end in itself.

From the beginning of its functioning the committee has used the term "exposure" to describe a *modus operandi* under which the political attitudes and affiliations of indi-

viduals are disclosed in as unfavorable a light as possible so that strong private sanctions such as loss of employment, social ostracism and community disapproval may be directed against them. Beginning in 1938 and up until the present, the committee has proudly boasted of its exposure function. In this very case, the overriding justification for the inquiry was this same exposure purpose.

The matrix of the exposure system is the committee's file and reference service which is a constantly growing catalogue of political dossiers. By the end of 1948, there were 300,000 references on the activities and affiliations of individuals and the committee had compiled reports on over 25,000 persons and 1768 organizations. Since then the files have continued to grow so that during 1950 the card references had increased to over half a million. The full quantitative extent of this political identification is detailed in the brief. This file and reference service is not highly restricted. The material in it is available to every member of Congress and has been supplied to members of the public. There is no legislative purpose in this political identification system, which is not distinguishable from the files maintained by totalitarian regimes. It is an intimidating device of formidable proportions and sharply underlines the fact that the committee is primarily an instrument for attacking people.

It is standard committee practice to interrogate witnesses under oath and threat of contempt concerning their political views and affiliations with a wide variety of organizations. The purpose of this kind of interrogation is the exposure of the individual rather than any legitimate legislative objective. In pursuance of its exposure aims, the committee goes far beyond an inquisition into political affiliation. It consistently demands answers to questions in the areas of personal associations, opinion and belief. Witnesses are asked about the fraternal organizations they belong to, the birthplace of their parents, their sal-

ary, the age of their children, their marital affairs. In the same way interrogation is conducted into matters of political opinion and belief over a wide area. Witnesses are asked such questions as whether they believe in giving Negroes the right to vote, or in intermarriage between Negro and white. Witnesses are likewise queried concerning their religious beliefs and affiliations. They have been asked whether they are gentile or Jew, whether they are a member of any church, whether they recognize a Supreme Being, whether or not their parents were orthodox Jews. Here, too, it is manifest that the committee's purpose is harassment and persecution and not legislation.

The committee's exposure program contemplates that by bringing to bear upon the individual in a dramatic way the force of governmental disapproval of his political views and affiliations, punishment through private sanctions will be sure to follow. The committee goes to great lengths to make certain that the record creates the fullest opportunity for the operation of these sanctions. Thus it insists that witnesses put their names and addresses on the record, even though that information is known to the committee and even when the individual expresses a fear of harassment. In the same way the committee forces witnesses to reveal other known details about themselves and their lives for the record. The purpose to punish is likewise reflected in the committee's insistence that a witness restate his address after he had invoked the privilege against self-incrimination. The same purpose is further revealed by the committee's contrasting treatment of a cooperative witness. When such witnesses ask that their address be withheld, their requests are usually granted.

Witnesses before the committee are divided into two groups, hostile and friendly. In order to gain the committee's approval as a friendly witness, one is required to identify his own political views and affiliations and inform on others as well. As we have shown, the committee's stock in trade is a huge file of "names." The life blood

of the exposure operation is a never-ending stream of individuals. Friendly witnesses replenish the stream with lists of their former political associates.

While the committee relies for its names on the testimony of friendly witnesses and professional informers, it persists in asking hostile witnesses to supply names, not with the expectation of a responsive answer but because it knows that the mere mention of a name and the refusal by the witness to identify it will accomplish its purpose.

The committee does not hesitate to seek information about individuals who have no connection at all with the matter under inquiry, such as high school children who act as counsellors at a summer camp or individuals attending a social gathering at which a Communist was present.

The exposure system requires a thorough conditioning of the public mind and the committee uses publicity both to promote approval of its activities and to prejudice and intimidate the witness. Publicity is a means of insuring the maximum injury to the witness. The hostile witness is made the victim of a spectacle, complete with floodlights, television and news reel cameras, designed to ruin him in the public eye. The logic of the committee's existence compels it to promise sensational revelations, to accuse before hearing, and to make its own disclosures as theatrical as possible.

The committee's attack on the individual does not end with exposure. It seeks dismissal from public and private employment and from union office of persons it considers subversive. To this end it cooperates with private groups and boasts of the fact that its hearings have resulted in economic injury to particular individuals. Witnesses appearing before it have charged that the mere publicity resulting from a subpoena has been sufficient to cause loss of employment, and recently the committee offered to help a witness obtain reinstatement if he would not rely on his constitutional rights. These uses of pub-

licity and the stimulation of private sanctions could hardly be less related to any legitimate purpose.

The committee does not expose individuals alone; it also exposes a wide variety of organizations, causes and movements which function through free assembly and association. The "subversive" organization is the vehicle through which the committee has increasingly expanded its jurisdiction and activity. The committee has devised an elaborate genealogy of subversion by which it measures an organization's consanguinity to the Communist parent stock.

The attack on organizations is completely divorced from their propaganda, just as the attack on individuals has no relationship to propaganda. Organizations which issue no propaganda at all are condemned with the same severity as those which do issue propaganda. The committee publishes a guide to subversive organizations. A listing in this *Burke's Peerage* of organizational subversion is the equivalent on the associational level of the exposure of an individual.

By now over 700 organizations and publications have been thus listed by the committee. In its listings the committee's chief form of proof is guilt by parallelism or mutual object. Once the organization is listed as subversive its members are condemned through guilt by association. The committee's attacks on organizations add to the evils of the resolution a sharp interference with freedom of assembly and of the right to engage in concerted activities.

The lack of legislative purpose in the committee's attack on organizations finds particularly clear expression in its intervention in labor matters. Almost from the beginning the committee made it a practice so to time its subpoenas and hearings as to ally its force and prestige with employers engaged in disputes with labor unions or with particular union factions. This anti-labor activity of the commit-

tee is not confined to the union involved in this case, but has been directed against a large number of unions and, indeed, the labor movement as a whole. On some occasions the intervention of the committee is flagrant, as for example when a committee member conducting a hearing during the course of a major strike, admitted that it was done as the result of a local request. Similarly, during a 1950 employee representation election campaign a union organizer was subpoenaed to appear before the committee to the accompaniment of screaming headlines in the local press. The union organizer responded to the subpoena on the return date but was never called to a hearing. In the same way during a recent department store strike in New York the officers of the striking union were told by the employer that the committee would be brought in. And it was. While the committee sometimes strives to give "security" coloration to its attacks on unions, this is shown to be a pretext for anti-labor partisanship.

The committee's procedures reflect its exposure purposes. The friendly witness is allowed complete latitude, but the hostile witness is denied all procedural rights. The friendly witness is invited to fill the record with his observations, but the hostile witness is confined to yes and no answers. The committee rejects affirmative evidence from hostile witnesses, especially if it involves criticism of itself.

The committee theoretically recognizes the right to counsel, but the very fact that a witness appears with counsel makes him suspect, and exercise of the right is discouraged. Indeed, counsel themselves have been attacked during the course of the hearing. If counsel consults with his client he runs the risk of being charged with coaching, and he is even denied the right to protest such a charge since under the committee rules counsel may not address it.

The unfriendly witness is given no notice of the charges against him or advance explanation of the reasons why his

presence is required. He is denied the right to cross-examine his accusers and sometimes finds that the committee has publicized a condemnation of him long before he reaches the witness stand.

In addition to the public hearing the committee frequently conducts executive sessions. This is to rehearse friendly witnesses, to coax witnesses into naming others when they might be ashamed to do so in public, and to inform the committee as to what lines of inquiry lack publicity value for public hearings.

An overall view of the committee functioning makes it manifest that the committee is really a new kind of tribunal, alien to the American constitutional system. It is only in name a committee in aid of a legislative purpose. Indeed, of all its activities, its legislative activities are least important and extensive. During the period of the committee's existence as a standing committee and up until the end of 1952, only a minute portion of the committee's published hearings dealt with proposed legislation.

The committee actually functions as a super-legislature which has created new political offenses which Congress constitutionally could not create. It spends all of its time policing these unconstitutional crimes and punishing those whom it finds guilty through its own unique sanction—exposure. This aspect of its activity combines the functions of a governmental detective agency, a grand jury and a court. Its filing and investigative activities resemble those of a governmental police force, but in contrast to the FBI the committee not only accumulates facts but it discloses them. The committee regards itself as a grand jury and has made many recommendations that individuals be prosecuted.

Many of its functions resemble those of a court and a member of the committee has referred to it "as the greatest open court in the country." The committee acts in a

judicial way, for it determines the guilt or innocence of the witnesses which it subpoenas. It does not hide this fact, it openly proclaims it. The committee not only punishes the political wrongdoer; it also clears the repentant political sinner. An increasing number of hearings is devoted to witnesses who seek clearance. As a matter of fact the committee is used as a clearance forum even by those who have not been directly attacked before it.

The committee functions in areas for which other governmental agencies have primary responsibility and as a result is engaged in constant conflict with them. The committee has clashed with governmental loyalty boards, the Atomic Energy Commission, the FBI, the armed forces intelligence units and federal grand juries. It has repeatedly feuded with the executive for access to personnel files.

The committee's political partisanship is notorious. At the outset of its functioning it used charges of subversion among government employees as a means of combatting New Deal programs. The partisanship of the committee was exposed most recently in the issuance of a subpoena by its chairman upon former President Truman. The committee does not hesitate to intervene in national and local elections. It did so in the 1944 national elections and in local elections in Michigan and Minnesota. More recently it interfered in elections for the Los Angeles Board of Education.

The committee's partisanship may also be seen in the manner in which it assigns committee members to conduct hearings in their home states in order to permit them to campaign for election or in some other way advance their political ambitions.

The committee uses its powers for political purposes through the issuance of its own propaganda. This program is designed to insure that all of the political crimes which the committee has legislated into existence are defined in sufficiently horrendous terms so that the commit-

tee's exposure of the witness will bring into play harsh private sanctions.

That the resolution, as consistently applied during the entire life of the committee, violates the Constitution can hardly be doubted. The government has no power to classify or censor ideas; it has even less power to exert its authority against individuals for the purpose of exposing their link to ideas and organizations whose expressions and functioning constitute the exercise of First Amendment rights. The attack on dissent has literally led to the attack on dissenters. The rights of assembly and political expression which the resolution and the committee have attacked in the crude way we have described are deeply rooted in our constitutional system and occupy the highest place in the hierarchy of constitutional values.

And we must recognize that opposed to these precious rights is the exercise of the power of inquiry which is subject to certain well-established and clearly understood limitations. It must be emphasized that it is because the power of inquiry is involved and not in spite of it that the resolution is unconstitutional. The scope of this power is plainly limited by the legislative function, and one would be hard put to it to find a congressional committee whose functioning has so little meaning for the legislative process. In addition, congressional inquiry is unauthorized into personal and private affairs. The right to be let alone in one's personal concerns is deeply rooted in this country and yields only to a pressing legislative purpose and even then only to the extent that this purpose makes such intervention necessary. Further, the procedures of the committee are flagrantly unjust; it affords the witness called before it none of the elemental procedural decencies and is motivated by patently partisan objectives. These evils have been deemed to require close judicial supervision. Finally, the area in which it is proposed that the power of inquiry be exercised must be defined with precision. This is so not only to reassure private citizens that their political activi-

ties will not be needlessly investigated but to give the witness a clear guide to the questions which he has a right to refuse to answer. It was an important purpose of the contempt statute, Section 192, to make congressional contempt an offense with clearly defined content.

As we have shown, the resolution, which gives content to the offense because it measures the pertinency of the questions put to the witness, is hopelessly vague.

III

Even if the resolution could have some conceivable constitutional application it could not be validly applied to petitioner. The decision of the Court in the *Rumely* case makes it clear that the enforced disclosure of the identity of an individual because he exercised a right protected by the First Amendment is unconstitutional. The Court therefore narrowed the scope of the resolution involved in the case so as to exclude from it the authority to investigate activities involving such disclosure. The Court's decision is no innovation. See *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203; *American Communications Association* v. *Douds*, 339 U. S. 382; *Thomas* v. *Collins*, 323 U. S. 516.

The essential attribute of political liberty is that political expression must be free of precisely the kind of exposure which is the committee's chief stock in trade. The Constitution would be meaningless if its protections were denied to groups forced to exercise political rights in private. The same reasons which have been recognized by the government as requiring anonymity in the protection of the rights of labor are applicable to political expression. It is a reality of the political process that the group in power, unless restrained, seeks to eliminate opposition, and protection against such attack requires freedom from compulsory disclosure. Indeed, the protection against com-

pulsory disclosure which is provided by the Fifth Amendment is closely linked with the struggle against political absolutism. The Court's decision in *American Communications Association* v. *Douds, supra,* makes it clear that constitutional limitations must be met to justify enforced disclosure of membership in the Communist Party. Moreover, inquiry into Communist Party membership is at the root of the committee's far-flung witchhunting practices.

Even if the resolution could conceivably be constitutionally applied it cannot and should not be construed to justify compulsory disclosures. To do so would create a conflict with the First Amendment as well as with the personal and private interests of the witness even when no legislative purpose is present. Of all of the operative terms of the resolution, the term "propaganda" is the clearest. It certainly does not give the committee jurisdiction to investigate the political coloration of individuals and organizations wholly divorced from a context of propaganda. The purpose of the interrogation here was not to identify the witness with propaganda, but to expose him. Indeed, the inquiry into propaganda had nothing to do with the questions asked and the reasons why they were asked. And the phrase "propaganda activities" does not expand the committee's jurisdiction to exact compulsory disclosures as an end in itself. It must be recalled that the comparable phrase "lobbying activities" was powerless to justify the modest claims made for the resolution involved in the *Rumely* case.

This Court is under a duty to construe the language of a statute so as to protect constitutional rights. It must, therefore, at a minimum construe this resolution so as to exclude from its purview the entire exposure program of which compulsory disclosure is a distinguishing feature. The Court would have to strain language to do otherwise.

Nor is the government's position improved by the other purposes ascribed to the inquiry. At the trial it was

claimed for the first time that the inquiry was specifically for the purpose of investigating various governmental ways of screening union officials for security purposes. How was this related to the investigation of propaganda? Undoubtedly because it was unrelated committee counsel added at the trial that the hearing followed in time the reference to the committee of the Wood Bill, H. Res. 3903. This is clearly a makeweight, not only because it was conceded that petitioner's testimony was not elicited to shed light on the bill, but also because the bill has nothing to do with either labor unions or labor union officials, but is confined to barring from employment in defense plants certain broadly defined groups of "subversive" workers. The subject matter of the bill is thus divorced both from the resolution and from petitioner. In addition, the government has conceded that the bill is both unconstitutional and unnecessary. We are finally left with the basic purpose of the inquiry as conceded at the hearing, namely, exposure, a purpose which is not legislative and is plainly unconstitutional.

IV

Petitioner relied not only on the First Amendment but also on the Fifth Amendment protection against self-incrimination. The issue in this case is whether his use of the phrase, "the First Amendment supplemented by the Fifth Amendment" which was followed by the expression of fear of "possible criminal prosecution" constituted an adequate assertion of the privilege.

This Court has repeatedly stressed the fundamental importance of the privilege and the need to give it a liberal construction in order to give effect to its purpose. The court below failed to give petitioner's assertion a liberal construction and moreover ignored his express reference to fear of possible criminal prosecution. Because the incriminating subject matter embraced petitioner's political affilia-

tion, he naturally referred to the First Amendment and to the Fifth Amendment. Put the fact that he also referred to the First Amendment does not deprive him of the protection of the Fifth Amendment. There is an historically close relationship between the two and a court must recognize this in construing the privilege. Moreover, it is clear that reliance upon reasons other than self-incrimination does not dissolve the protection of the privilege.

At one point petitioner gave as his reason for refusing to answer a question the fact that the committee had no right to pry into his associations, and not his fear of criminal prosecution. The court below gave undue significance to this single answer and ignored the entire line of inquiry of which it was a part. This entire line of inquiry establishes that the witness clearly communicated his fear of prosecution and that his answers to the key and controlling questions in the line of inquiry all reflected his fear of criminal prosecution. The decisions of this Court and lower courts dealing with comparable contentions in respect to the insufficiency or disclaimer of assertion of the privilege against self-incrimination, all insist that the answer must be read in the light of the entire context of the case and of the setting of peril. There is an overriding policy against lightly inferring a waiver of constitutional rights or treating a slip as an abandonment of such a right. *Smith* v. *United States*, 337 U. S. 137.

V

Petitioner was not directed to answer the questions put to him. This is a fatal defect since there must be a disobedience of a direction to answer before there can be a case of contempt under Section 192.

A majority of the court below recognized that petitioner had raised objections which required some action by the committee before he could be held in contempt. We sub-

mit that the action must be a direction to answer the question, and that anything short of a direction fails adequately to protect the witness. It is significant in this regard that the House committee in other cases has followed the practice of directing the witness to answer when it overruled his objections and the Senate Judiciary Committee has always done so.

The court below refused to apply the same standard of explicitness to the direction requirement which it imposed upon petitioner's assertion. The court below held that petitioner was made aware that the committee desired his answers, despite the grounds advanced for refusing. Even if this were a proper standard, rather than a standard of explicit instruction to answer, it involved a material element of the offense which could be resolved only by the trier of fact. The court below recognized as much in *Quinn* v. *United States, supra.* The opinion of the trial judge demonstrates that he did not in any way consider the question of whether the committee intended that petitioner answer despite his objection.

ARGUMENT

POINT I

The resolution is unconstitutional inherently and as construed by the committee.

In recent years a substantial number of cases have come before the Court in which it has consistently upheld limitations upon the exercise of constitutionally protected civil liberties. Undeniably the Court has greatly expanded the permissible area of restraint and in so doing it has accepted every justification advanced in the name of security and rejected every appeal to vindicate the guarantees of

the First Amendment. And it has been all too quick to find some special occupational or other circumstance to justify denial to particular persons or groups of rights theoretically granted to the entire population. In the scale of constitutional values of this democracy, it would seem that limitations on the liberty of the individual imposed in the name of security, however remote the substantive evil or national danger might be from the activity regulated or prohibited, are assigned the greatest weight and receive the unquestioned deference of our courts. The freedom to speak, to entertain non-conformist opinions or to engage in unorthodox political expression, on the other hand, has been subordinated to the lowliest rank. It would seem that no right, however private, personal or insignificant, comes to court with less hope of vindication than the rights protected by the First Amendment.

The effect of this rapidly progressing devaluation of the First Amendment has not been confined to its direct victims. This country has become the theater of spreading repression, the frightening character of which has not been lost on our allies abroad. The instruments of government obsessively develop variations on the theme of the "Red Menace" and the "Red Plot" to perpetrate greater and greater outrages on political liberty. The courts have become both victims of and contributors to this process. A few well-placed references to conspiracy, sabotage, espionage and other fear-engendering terms, are all that is needed to obtain judicial sanction for the most irresponsible invasions of civil liberties. After paying lip service to the conflicting claims of security and liberty, the courts with varying degrees of reluctance add their blessings to new repressions which in turn are exploited to carry the cycle farther. At a time when we proclaim in the chambers of international tribunals our dedication to freedom and fill the air waves of the world with the boast that we are a free people, we are unfree as never before. Vir-

tually every sensitive observer of our national life agrees on this unhappy fact.[8] It is no exaggeration to say that the First Amendment threatens to become a historical curiosity with only enough force to prevent bigots from persecuting small religious sects or censoring films, but powerless to enable us to make those decisions by which a democracy determines its fate.

Yet it would be wrong to conclude that we have accepted with either resignation, hopelessness or indifference the disaster that faces us. All over America men are asking, how did we come to this pass and how shall we get back?

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[8] See, e.g., O'Brian, *Loyalty Tests and Guilt by Association*, 61 Harv. L. Rev. 592; Chafee, *Letter to Honorable Alexander Wiley*, 94 C. R. A3848 (1948); *Letter to the President by Members of Yale Faculty of Law*, 4 A.B.A.J. 15, 16; Andrews, *Washington Witch Hunt* (1948); Barth, *The Loyalty of Free Men* (1951); Stewart, *The Year of the Oath* (1950); *A Letter to Presbyterians Concerning the Present Situation in Our Country and in the World*, General Council of the General Assembly of the Presbyterian Church in the United States of America (1953); *To Secure These Rights*, Report of the President's Committee on Civil Rights (1947); Biddle, *The Fear of Freedom* (1951) with introduction by Harold L. Ickes; Douglas, "The Black Silence of Fear", *New York Times Magazine*, Jan. 13, 1952; Mather, "Education for Democracy Endangered", *The Churchman*, Nov. 1, 1948; Miller, *The Judges and the Judged* (1952); Commager, "Guilt—and Innocence—by Association", *New York Times Magazine*, Nov. 8, 1953; MacLeish, *Freedom is the Right to Choose* (1951); Wilcox, ed., *Civil Liberties Under Attack* (1951). Address of Paul Hoffman before the Indianapolis Bankers Association, *New York Times*, Oct. 19, 1951; Address of the Honorable Theodore McKeldin, Governor of Maryland, to the Maryland State Teachers Association, *New York Times*, Oct. 19, 1951; Chafee, Jr., *Thirty-Five Years of Freedom of Speech* (1952), 34; Fine, "Creeping Paralysis in our Schools", *New York Times*, May 10, 1951; Address of Senator Herbert H. Lehman, before the National Community Relations Advisory Council, *New York Times*, Oct. 11, 1952; Address of former President Harry S. Truman to nationwide audience, Nov. 17, 1953; Address of Adlai Stevenson before leaders of Democratic Party, *New York Times*, Sept. 13, 1953. In an appendix to this brief we excerpt statements of prominent Americans on the committee and its impact.

Of course, there is no single answer. But this case lies at the heart of any answer. It is by no means extreme to state that the committee and its resolution have contributed more than any one law or governmental agency to our present plight. It is the committee which has fostered among our people the carking fear that our country is rotting with subversives and that non-conformity and dissent mask espionage and sabotage. It is the committee which has made the political test oath a distinguishing feature of American life. It is the committee which through the use of guilt by association and even more repellent forms of proof has made a joke of the right of assembly. It is the committee which has conditioned the public mind to the desirability of doing injury to the political dissenter and harnessed hysteria to smear. It is the committee which has contributed most to converting the federal government in Washington, under our political system a traditional haven of refuge and protection for those locally oppressed and persecuted, into a national inquisitor, passing upon the political orthodoxy of little people and prodding local institutions and communities into persecutive cooperation.

It is the committee which has done most to rob the administration of justice of vigor and independence when the First Amendment comes to court. It is the committee which has made the issue of communism an instrument of partisan political warfare and a barrier to the rational solution of the political problems which confront our time. Just as the invalidation of the resolution is an indispensable prerequisite to the recovery of constitutional liberty in this country, so judicial approval of the resolution or of the disclosures compelled under it would give new sanction to the repressive system of government by political investigation which we call McCarthyism.[9]

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[9] As Professor Robert K. Carr observes: "It may fairly be asserted that McCarthyism would never have been possible had not the Un-American Activities Committee, and its predecessor, the Dies committee, paved the way from 1938 on." Carr, *The House Committee on Un-American Activities 1945-1950* (1952), 455-456.

To urge that the resolution is condemned by the First Amendment is surely one of the most cautious understatements in all constitutional history. The resolution is as violently at war with that Amendment as a statute providing for a hereditary monarchy to rule the United States would be with Article II of the Constitution. It is flatly inconsistent with the plain language of the Amendment, with the reasons which brought it into being and the values it was designed to protect.

A. The resolution authorizes censorship of ideas.

The Committee on Un-American Activities of the House of Representatives was created in 1938 as a temporary, special investigating committee for the purpose of conducting an investigation into: "(1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." The committee's authority was continued by the successive resolutions of each succeeding Congress until 1945, when by amendment of the House rules, the committee was added to the list of standing committees of the House.[10] The committee retained this status under the Legislative Reorganization Act of 1946.[11] For the purposes of its investigations, the committee is authorized to conduct hearings at any time or place within the United States, whether or not the House is sitting, has recessed or adjourned. It is the only investigating committee to

[10] See note 1, *supra*.

[11] P. L. No. 601, Sec. 121 (b) (q), 79th Cong., 2d Sess. (1946).

achieve the status of a standing committee,[12] and was the first committee with permanent authority to require the attendance and testimony of witnesses and the production of documents.[13] It is the only House committee with such power under the Legislative Reorganization Act of 1946. As one of its former members has said, it is "the most powerful [committee] in Congress."[14]

The sole and exclusive subject matter of the resolution is, and has been from the beginning,[15] propaganda. This is apparent both from its language and the internal interrelationship of the resolution's clauses. The first clause does not authorize an investigation into conduct or into "un-American activities", but only into those activities

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[12] See remarks of Representative McCormack, 91 C. R. 13, 14 (1945).

[13] H. Res. 5, 79th Cong., 1st Sess., 91 C. R. 10, 15 (1945). Throughout this brief we refer to H. Res. 5 and the corresponding provision of the Legislative Reorganization Act as "the resolution".

[14] Mundt, "What is Un-American Activity?" *Liberty*, Sept. 22, 1945, p. 19.

[15] The 1938 resolution is modeled on the resolution adopted in March 1934 authorizing an investigation of (1) nazi propaganda activities; (2) "subversive propaganda * * * instigated from foreign countries"; and (3) related questions which might aid in legislation. H. Res. 198, 73d Cong., 2d Sess., 78 C. R. 4934, 4949. For the background of the committee, which seems to have been strongly marked by an anti-alien coloration, see Ogden, *The Dies Committee* (1945) 3-38. Perkins, *Congressional Investigations of Matters of International Import*, 34 Am. Pol. Sci. Rev. 284, 286 (1940), has this to say about the committee's background:

> "The investigation of communism [in 1930] conducted by Representative Hamilton Fish was, on his own admission, an attempt to collect facts supporting, and even requiring, the deportation of alien Communists. The Nazi investigation, or the investigation of 'un-American activities' as it was later called, was somewhat more inclusive, but had the same purpose. Mr. Dickstein, as chairman of the House Committee on Immigration, was, no doubt, motivated by the desire to increase the business of that committee. The current Dies investigation on the same subject has largely the same background and purpose."

which take the form of "propaganda". The second clause of the resolution in no way expands its basic subject matter. It merely particularizes the generality of the first clause both with respect to the kinds of propaganda to be investigated ("subversive and un-American propaganda that * * * attacks the principle of the form of government as guaranteed by our Constitution") and the source of such propaganda ("that is instigated from foreign countries or of a domestic origin"). The third clause is obviously ancillary to the first two clauses and does not by implication define a jurisdictional area beyond that expressly marked out by the first two clauses. Thus, no one would seriously argue that the third clause could be construed to read, "all other questions in relation thereto, whether or not they involve propaganda, that would aid Congress in any necessary remedial legislation."

The key jurisdictional term in this resolution is "propaganda."[16] The resolution does not, either disjunctively or conjunctively, link propaganda with some other form of activity. If the subject matter of propaganda were subtracted from the resolution, there would be nothing left. The only "remedial legislation" which the committee is authorized to recommend is legislation relating to propaganda.

Propaganda is, of course, simply another way of describing speech and the dissemination of ideas.[17] The distinction between the communication of ideas and other kinds of activity is not only deeply embedded in our law, but is enshrined in the documents by which we live as a people.

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[16] The basic jurisdiction of every standing committee may similarly be described in a key word or phrase, e.g., "interstate and foreign commerce," "agriculture," "appropriation of the revenue for the support of the Government." Legislative Reorganization Act of 1946, Sec. 121; 60 Stat. 823, 824, 826.

[17] The Court of Appeals for the Second Circuit has defined "propaganda" as a "plan for the publication of a doctrine or system of principles." *Leubuscher* v. *Commissioner*, 54 F. 2d 998, 1000.

The fact that Congress in this extraordinary resolution singled out speech alone for investigation is pregnant with two consequences. First, no gloss, however ingenious, can convert the resolution into one dealing with conduct rather than speech, for to do so would be to attribute to Congress a disregard or ignorance of the most meaningful distinction which our public law has produced. Second, the resolution must conform to the rigorous standards imposed by the First Amendment upon abridgments of free speech.

Whatever judicial conflicts may exist concerning the scope of First Amendment guarantees, no one would contend that we have reached the point when Congress may abridge the dissemination of ideas as such. Yet this resolution does not relate the speech with which it deals to some substantive evil in the area of conduct. The substantive evil is the content of printed matter, utterances and ideas.

In order to exercise jurisdiction the committee must inevitably label and classify those ideas which are "un-American," "subversive" or "attack the principle of the form of government as guaranteed by our Constitution." The resolution thus authorizes the committee officially to brand certain classes or forms of ideas and expression. Such activity by the legislative branch of the government can only serve to censor free speech and political expression, for people are unwilling or afraid to advocate or even to listen to ideas which have been branded as disloyal by the government.

It is apparent that such an extraordinary departure from representative government, as we have known it, would have to be justified—if it could be justified at all—by the most meticulously defined limitations. Instead we find that the scope of this censorship system is virtually limitless.

1. The unlimited scope of the committee's censorship jurisdiction as shown by the terms of the resolution.

The propaganda which the committee is authorized to investigate is propaganda which is "un-American," "subversive" or which "attacks the principle of the form of government as guaranteed by our Constitution." Far from limiting the potential dangers threatened by the resolution, these terms create no meaningful boundaries at all. They are neither terms of art nor have they acquired a specialized or technical meaning or a meaning "by general acceptation." *Schechter Poultry Corporation* v. *United States,* 295 U. S. 495, 552. They are merely forms of political polemic, epithets of opprobrium used to attack the ideas or advocacy which are objectionable to the person who employs them.

The President's Advisory Committee on Universal Training responded to the contention that universal military training is "un-American:"

> "An epithet is not an argument. 'Un-American' means simply that it has not been done before in America. If Americans want it, it becomes American." [18]

In *Fcinglass* v. *Reinecke*, 48 F. Supp. 438, 441, the court pointed out:

> "Any political idea that happens to conflict with the economic or political notions of an individual is apt by him to be deemed un-American."

The designation "un-American" implies that there are certain ideas and concepts that are "American." Whatever usefulness such a distinction may have as an appeal to

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[18] *A Program for National Security,* Report of the President's Advisory Committee on Universal Training (1947), 39.

patriotism, it is meaningless as a tool for classifying speech and ideas.[19]

Perhaps the most telling commentary on the difficulty of this term is its use by minority members of the committee to condemn the majority's interpretation of the resolution. Thus in the committee's 1942 report, Congressman Voorhis complained:

> "Once * * * the committee undertakes to accuse people of un-American activities because they criticize certain features of our economy or say unkind things about finance capitalism or because they come out for a greater degree of cooperation in our economic life, it is in danger of becoming an agency which arrogates to itself the right to censor people's ideas. That in itself is un-American." [20]

Like the term "un-American", the term "subversive" is not a term of art, nor does it have an accepted common meaning, but is rather the language of political abuse or opprobrium. This term, which the Court used in quotation marks in *United States* v. *Lovett*, 328 U. S. 303, 308, is probably one of the most question-begging terms yet de-

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[19] In an editorial in the *New York Times* on January 5, 1945, the basic ambiguity of this term was thus commented on:

> "The Special Committee to Investigate Un-American Activities suffered from ambiguity at its birth. Just what is an un-American activity? The law defines crimes against the state, and persons committing such crimes are admittedly un-American. But is it un-American to hold an unpopular opinion * * * or take an attitude that is also held or taken by the Communists? * * * Had he [Dies] pushed his opinion to its logical end more than half the population of the United States might have been denounced * * *. * * * he used methods that old-fashioned persons regard as un-American—indictment by innuendo, refusal of defense testimony, prosecution and sometimes persecution in place of impartial investigation."

[20] 77th Cong., 2d Sess., H. Rept. 2277, Part 2, 4. Compare Congressman Walter's denunciation (*infra*) as "un-American" of the committee chairman's issuance of subpoenas in the White case without consulting committee members.

vised. Nowhere in the resolution is the question answered, subversive of what? [21]

It has been well said that this term is a term of abuse customarily applied to activities "helpful or benevolent to wage earners, persons on relief, or those who are disadvantaged in the struggle for existence." [22]

Since the words "subversive" and "un-American" have no meaning beyond the prejudices of the speaker, we are left only with propaganda which "attacks the principle of the form of government as guaranteed by our Constitution." But this phrase suffers from comparable ambiguity. In *Schneiderman* v. *United States*, 320 U. S. 118, this Court was unable to identify the "principles of the Constitution" and refused to hold that "petitioner is not attached to the Constitution by reason of his possible belief in the creation of some form of world union of Soviet republics" (at 145). The Court suggested that if there is any indispensable principle of the Constitution, it is the guaranty of freedom of thought (at 138, 144), and stated (at 137, 138) that the Constitution itself refutes "the idea that attachment to any particular provision or provisions is essential, or that one who advocates radical changes is necessarily not attached to the Constitution."

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[21] The Committee on Appropriations whose report was considered by the Court in *United States* v. *Lovett, supra*, sought to formulate its own definition of "subversive activity" after conceding that the term had not theretofore been defined by Congress or by the courts. This definition states that, "Subversive activity in this country derives from conduct intentionally destructive of or inimical to the Government of the United States—that which seeks to undermine its institutions, or to distort its functions, or to impede its projects, or to lessen its efforts, the ultimate end being to overturn it all. Such activity may be open and direct as by effort to overthrow, or subtle and indirect as by sabotage." 78th Cong., 1st Sess., H. Rept. 448 (1943) 5.

[22] Emerson and Helfeld, *Loyalty among Government Employees*, 58 Yale L. J. 1, 40 (quoting Attorney General, now Mr. Justice, Jackson).

The Court of Appeals in *Barsky* v. *United States*, 167 F. 2d 241, 245, 246 (C. A. D. C.) cert. denied 334 U. S. 843, thus sought to give precision to this phrase: "The basic concept of the American system, both historically and philosophically, is that government is an instrumentality created by the people, who alone are the original possessors of rights and who alone have the power to create government. * * * The prime function of government, in the American concept, is to preserve and protect the rights of the people." Cf. *Schneiderman* v. *United States*, *supra*, at 181 (Chief Justice Stone's dissenting opinion). But this definition is so broad as to be meaningless.

As Judge Clark pointed out in his dissent in *United States* v. *Josephson*, 165 F. 2d 82, 96 (C. A. 2), cert. denied 333 U. S. 838:

> "And the clause as to attacking the principle of our form of government, as guaranteed by our Constitution, cannot be given any specific content. The freedom of amendment permitted by our Constitution makes possible advocacy of the most extensive changes in our governmental form. It cannot be that the advocacy of amendments urging change in the relation, for example, of the Executive and Congress, the subject recently of several popular books, is subversive."

Individuals and organizations who oppose economic or political reforms seek to recruit "patriotic" values to their cause, by linking an eighteenth century document with eighteenth century economics and theories of governmental power.[23] But as Justice Holmes remarked long ago, "a constitution is not intended to embody a particular economic theory," *Lochner* v. *New York*, 198 U. S. 45, 75; and neither courts nor legislatures are warranted in treating

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[23] Among the guardians of the "principle of the form of government as guaranteed by our Constitution" are the Committee for Constitutional Government (*United States* v. *Rumely*, 345 U. S. 1) and the Constitutional Educational League (*Kamp* v. *United States*, 176 F. 2d 618, cert. denied 339 U. S. 957).

"as unconstitutional what goes against the grain," Frankfurter, J., concurring in *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538, 547.

The basic obscurity of the resolution is compounded by the assumption that there is some one principle of the Constitution. Judge Edgerton, dissenting in the *Barsky* case, *supra*, at 262, commented on the difficulty of the expression:

> "Does 'the principle of the form of government' here mean the republican or democratic principle only, or does it include e.g. the constitutional duty of courts not to enforce unconstitutional legislation? This court puts a plural where Congress put a singular, and says 'the principles * * * are obvious.' To me it is not obvious how much Congress meant by 'the principle,' or how much the court means by 'the principles,' or that the two meanings are identical. Both because 'the principle' is vague and because 'attacks' is vague, I do not know whether propaganda 'attacks the principle' if, e.g., it advocates a constitutional amendment replacing the American principle of judicial review by the British principle of legislative supremacy."

The clearest "principle of the form of government as guaranteed by our Constitution" is freedom of thought and of political affiliation and expression; "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate," *United States* v. *Schwimmer*, 279 U. S. 644, 654, 655. As one of our most eminent historians has written:[24]

> "True loyalty may require, in fact, what appears to the naive to be disloyalty. It may require hostility to certain provisions of the Constitution itself, and historians have not concluded that those who subscribed to the 'Higher Law' were lacking in patriotism.

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[24] Commager, "Who is Loyal to America?" in *Primer of Intellectural Freedom* (1949), edited by Howard Mumford Jones, 30.

> We should not forget that our tradition is one of protest and revolt, and it is stultifying to celebrate the rebels of the past—Jefferson and Paine, Emerson and Thoreau—while we silence the rebels of the present. 'We are a rebellious nation,' said Theodore Parker, known in his day as the Great American Preacher, and went on: 'Our whole history is treason; our blood was attainted before we were born; our creeds are infidelity to the mother church; our constitution, treason to our fatherland. What of that? Though all the governors in the world bid us commit treason against man, and set the example, let us never submit.'" [25]

Surely there is nothing more truly "un-American" or more hostile to the "principle of the form of government as guaranteed by our Constitution" than the attempt by a governmental body to compel conformity. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, 642. See, also, Jackson, J., concurring in *Thomas* v. *Collins*, 323 U. S. 516, 545.

An eloquent commentary on the content of the phrase "the form of government as guaranteed by our Constitution" is found in its interpretation by the committee's former counsel in the following letter: [26]

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[25] Compare the concurring opinion of Justice Jackson in *American Communications Association* v. *Douds*, 339 U. S. 382, 440, footnote 12.

[26] 92 C. R. A701 (1946).

HOUSE OF REPRESENTATIVES
COMMITTEE ON UN-AMERICAN ACTIVITIES

Washington, January 29, 1946

VETERANS AGAINST DISCRIMINATION
NEW YORK, N. Y.

GENTLEMEN:

Would you please be good enough to send me a list of your officers and your managing committee?

Several of your circulars have been sent to us by citizens of your city, and I note that you refer to democracy several times. I wonder if you are sufficiently familiar with the history of the United States to be aware that this country was not organized as a democracy, and that Section 4 of Article IV of the Constitution reads, in part, as follows: "The United States shall guarantee to every State in this Union a republican form of government."

Is it your purpose to ask for an amendment of the Constitution or do you propose to conduct a propaganda campaign against the administration of the provisions of the Constitution?

Yours very truly,

ERNIE ADAMSON
Chief Counsel

2. The legislative background and committee interpretation of the terms of the resolution confirm its unconstitutional scope.

The legislative background of the term "un-American" in no way serves to sharpen its meaning. Thus, when the House passed Resolution 282 in 1938, members unsuccessfully demanded the insertion of controlling or limiting standards with respect to the meaning of the term "un-American":

> "Mr. Patrick. It seems to me the most important thing involved in this matter is what is an un-American and what is an American activity? Who is to pass on that question?

"Some things have been mentioned that perhaps we would concede to be un-American. But what is un-Americanism?

"* * * what will determine when anything is un-American so that we can put a finger on it and say that is it?

"Mr. Taylor. The Congress will finally prescribe that.

* * * * * *

"Mr. Maverick. Nobody knows what is un-American. I ask you what is un-American?

"Mr. Knutson. The goose-step." [27]

In 1940, during the debate on the re-enactment of the basic resolution (86 C. R. 570-604), the members of the committee expressed conflicting views on the meaning of the term "un-American." [28]

The extreme latitude of the House committee's resolution prompted a minority member, Congressman Voorhis, to complain in a minority report in 1942:

"All the minority is contending for is the right of loyal American citizens to disagree politically with the majority of the Dies committee without being branded as subversive and un-American." [29]

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[27] 83 C. R. 7572, 7576 (1938). In the course of a debate on a prior resolution along similar lines the proponents refused to indicate its meaning when Representative Johnson asked:

"What I would like to find out is what is un-American." H. Res. 88, 75th Cong., 1st Sess., 81 C. R. 3286 (1937).

In answer to a prior similar question, the member in charge of the resolution stated:

"The committee may read this resolution and put whatever interpretation they see fit upon it without any limitation so far as I am concerned" (81 C. R. 3285).

The resolution failed to pass.

[28] One member of the committee defined un-American activities as "organizations and groups * * * which are directed, controlled and subsidized by foreign agencies or governments" (86 C. R. 576).

[29] 77th Cong., 2d Sess., H. Rept. 2277, Part 2 (1942), 7.

The lack of meaning of the term "subversive" was complained of by Representative Outland in 1943:

> "Just what are subversive activities? Who is to be the judge? There have been people who have called the chairman of the committee subversive, which in my opinion is entirely incorrect. But the permitting of individual interpretation of just what is deemed subversive is a dangerous and un-American thing." [30]

This question was asked after almost five years of investigation and committee reports. No answer to it is recorded.

In 1945, seven years after its creation, the committee found it necessary to farm out the resolution to the Brookings Institution for interpretation.[31]

In recent years, the committee has not troubled itself with attempting to define or justify the scope of its authority.[32] In one of its early reports, however, the committee made an attempt to comment on the meaning of the term "un-American." The committee emphasized that "Americanism recognizes the existence of a God and the all important fact that the fundamental rights of man are derived from God and not from any other source." This report suggests that the following *inter alia* are Communist and therefore un-American: "absolute social and racial equality"; "the destruction of private property and the abolition of inheritance," apparently irrespective of the means employed or advocated; "the substitution of communal ownership of property for private ownership"; belief that it is "the duty of government to support the people"; "a system of political, economic, or social regimentation based upon a planned economy"; "collectivistic

[30] 89 C. R. 806 (1943).

[31] *Suggested Standards For Determining Un-American Activities*, The Brookings Institution (Washington, 1945).

[32] For some informal efforts by a committee member to defend its jurisdiction, see *infra*, note 305.

philosophy"; and "the destruction of the American system of checks and balances with its three independent coordinate branches of government." [33]

In its 1940 report, the committee set forth the following definition of "un-American":

> "By un-American activities we mean organizations or groups existing in the United States which are directed, controlled or subsidized by foreign governments or agencies and which seek to change the policies and form of government of the United States in accordance with the wishes of such foreign governments." [34]

On July 18, 1946, the chief counsel of the committee wrote Congressman Doyle: "The committee has adopted no definition of subversive or un-American activities." [35] Mr. Doyle commented:

> "Ever since I became a member of this Seventy-ninth Congress, I have sought to ascertain by what definition of 'subversive activity' or 'un-American activity' a person was to be measured as either a loyal or disloyal American citizen. No one seemed to find any high court definition used by the House Committee nor could I find any printed or any announced definition which the committee had to either guide or limit its activities.
>
> * * * * * *
>
> "This illustrates that there can be at present as many definitions of 'subversive and un-American' as there are committee members. In fact, I think I notice that there is some sharp difference of opinion expressed by committee members on this point." [36]

[33] 76th Cong., 1st Sess., H. Rept. 2, (1939), 10, 12. We discuss, *infra*, the application by the committee of these standards to various ideas, causes and political activities.

[34] 76th Cong., 3d Sess., H. Rept. 1476 (1940), 2.

[35] 92 C. R. A4743 (1946).

[36] *Ibid.*

The Court thus has under review a resolution which authorizes an investigation of the content of ideas, the scope of which is neither defined nor definable. The limitless scope of the resolution explains why the committee's operations are, as we will show, governed by partisanship, prejudice and the subjective whims of particular committee members. The committee itself recognizes no limitations at all on the permissible range of its activities. Thus, when Representative Wood was chairman of the committee he stated at one of its hearings, "The committee is empowered to investigate any activities of any organization or any individual. The committee conceives it to be within its scope to investigate the activities of any organization that expounds American [sic] principles of government." [37]

In the same vein are the recent statements of Representative Jackson:

> "I regard anything as a proper subject for investigation and interrogation by this committee which has affiliated with it a considerable number of individuals who are either themselves members of the Communist Party or who have for many years followed the Communist Party line.
>
> * * * * * *
>
> "Is there any phase of life in this country which is not subject to the propaganda activities of the Communist Party?" [38]

And so it was from the very beginning.

B. The committee's consistent interpretation of the resolution establishes its unconstitutionality.

The resolution is not an abstract exercise in political theory. It is a guide to the subject matter which the committee may investigate, to the scope of its compulsory

[37] *Communist Party* (1945) 31.

[38] 3 *Los Angeles Area* (1953) 619, 645.

process and to the extent of its power to cause witnesses to be punished for contempt. The content and meaning of the resolution are best gleaned from the activities of the committee.

The lack of limitation on the scope of the resolution is nowhere better seen than in the catalogue of ideas, utterances and causes which it has designated as "subversive" or "un-American." Thus, Congressman Thomas, subsequently chairman of the committee, interrogated J. B. Matthews as follows during the first committee hearings: [39]

> "Mr. Thomas. The second question is: Are not many of the acts now being advocated or now being enacted by the Government of the United States similar to the steps which led to dictators in Soviet Russia, Germany and Italy?
>
> "Mr. Matthews. Well, now, Mr. Chairman, that is calling for a pure conclusion.
>
> "Mr. Starnes (presiding). I think so. This committee is not concerned in the least in partisanship.
>
> "Mr. Thomas. This is not partisanship. This is un-American activity."

Asked to name names and specific acts, Mr. Thomas mentioned "the Supreme Court packing bill and the reorganization bill."

The committee has brought within the orbit of "un-American," criticism of itself, of individual members of Congress, of the FBI, and espousal of the New Deal legislative program.[40] One organization, for example, was

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[39] 1 *Investigation*, 915, 916.

[40] Ogden, *op. cit.*, 236-237; *New York Times*, Feb. 23, 1941; 3 *Motion Picture Industry* (1951) 669; 77th Cong., 2d Sess., H. Rept. 2277 (1942), 2; 2 *Communism in the Government* (1950) 2959-2985, testimony of Max Lowenthal (the subpoenaing of Lowenthal in these hearings was considered an attempt to discredit an individual solely because he had written a work critical of the FBI, see Carr, *op. cit.*, 202-203); 3 *Investigation* 2199; 4 *Infiltration—Education* (1953) 1088-1089.

cited as a Communist front because it formulated and circulated a petition to discontinue the Die Committee.[41] Attacks on the committee have been characterized by it as "inspired by a subversive element in this country and carried out by their fellow travelers * * *."[42]

Indications of "subversiveness" include belief in the extension of universal suffrage and the raising of wages and the standard of living;[43] signing a letter in behalf of Harry Bridges and speaking favorably of sit-down strikes;[44] advocacy of anti-poll tax legislation, activity on behalf of the Scottsboro defendants and support of the Morgenthau plan for Germany;[45] and criticism of McCarran-Walter Immigration Act.[46]

The committee has applied the resolution in these and similar ways to government agencies, labor unions, religious groups, scientists, the motion picture industry, writers, lawyers, teachers, doctors, the C. I. O. Political Action Committee, radio commentators, minority groups, farm groups, professional groups, veterans groups, youth groups, and the foreign born. Its regional investigations, cutting across occupational lines, cover the District of Columbia, Hawaii, Western Pennsylvania, Philadelphia,

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[41] *Citations by Official Government or State or Municipal Agencies or Reliable Private Organizations Regarding the Character of Organizations Named* (1946).

[42] *Gerald L. K. Smith* (1946) 3.

[43] 3 *Investigation (Exec.)* 1299-1300.

[44] 78th Cong. 2d Sess., H. Rept. 1311, *Report on the C.I.O. Political Action Committee* (1944), 82.

[45] 80th Cong. 1st Sess., H. Rept. 592, *Report on the Southern Conference for Human Welfare* (1947), 4, 10.

[46] *G. Bromley Oxnam*, 116-117.

Cincinnati, Columbus, New York, Albany, Detroit, Chicago, Hollywood, Los Angeles, Baltimore and Massachusetts.[47]

C. The resolution violates the First Amendment.

Unless we have crossed a meridian of time in which the landmark decisions of the Court on the subject of the First Amendment have lost their meaning the resolution cannot stand.

The resolution takes as its target the advocacy and circulation of ideas. But the First Amendment forbids legislation which abridges, burdens, restricts or punishes the advocacy of ideas through the exercise of press, speech or assembly where such advocacy is not part of an attempt to bring about a substantive evil.[48]

The resolution on its face and as it has been consistently construed abridges the kind of speech, public discussion and political expression, which it is the essential purpose of the First Amendment to protect from congressional invasion. It is upon the unimpaired exercise of these rights that popular self-government depends. *DeJonge* v. *Oregon*, 299 U. S. 353; *Whitney* v. *California*, 274 U. S. 357, 375,

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[47] *Index V, Cumulative Index to Publications of the Committee on Un-American Activities*, 1-9, and committee publications for 1953. Some of the geographical areas have been covered several times; e.g., Hollywood: *Motion Picture Industry* (1947) and *Motion Picture Industry* (1951-2); Los Angeles: *Los Angeles Professional Groups* (1952-3) and *Los Angeles Area* (1952-3); Washington, D. C.: 1 *District of Columbia Area* (1949) and 2 *District of Columbia Area* (1950); New York: *New York City Area* (1953) and *Infiltration—Education* (1953).

[48] For example, *Terminiello* v. *City of Chicago*, 337 U. S. 1; *Thomas* v. *Collins*, 323 U. S. 516; *Schneiderman* v. *United States*, 320 U. S. 118; *Thornhill* v. *Alabama*, 310 U. S. 88; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Schneider* v. *State*, 308 U. S. 147; *Herndon* v. *Lowry*, 301 U. S. 242; *Gitlow* v. *New York*, 268 U. S. 652, 672; *Pierce* v. *United States*, 252 U. S. 239, 253; *Schaefer* v. *United States*, 251 U. S. 466, 482; *Abrams* v. *United States*, 250 U. S. 616, 630; *Schenck* v. *United States*, 249 U. S. 47.

and *Gilbert* v. *Minnesota*, 254 U. S. 325, 338 (Brandeis, J., dissenting). The interest which the resolution invades is not merely that of the individual to speak and to agitate, but the right of the people to hear and judge for themselves.

From what has been said with respect to the indefiniteness of the resolution it seems incontrovertible that even if the resolution might conceivably be applied constitutionally, it must be invalidated. As the Court has frequently held, a statute which is so vague and indefinite as to permit within its scope the invasion of the guaranties of free speech, press and assembly, violates the First Amendment. In *Winters* v. *New York*, 333 U. S. 507, 509-510, the Court said:

> "The appellant contends that the subsection violates the right of free speech and press because it is vague and indefinite. It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. Stromberg v. People of State of California, 283 U. S. 359, 369; Herndon v. Lowry, 301 U. S. 242, 258. A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press."

Vagueness in this area is more objectionable than it is in ordinary criminal statutes because a vague statute curtailing the exercise of civil rights exerts an intimidating effect on speech generally and permits discriminatory application.

The resolution is not only hopelessly vague, but it would be difficult to find a more glaring example of over-regulation. The Court has repeatedly insisted that a statute which invades basic rights can avoid a clash with the

Constitution only if it is narrowly drawn to deal with the precise evil which the legislature is seeking to curb. *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *DeJonge* v. *Oregon, supra.*

We frankly do not know and find it fruitless to speculate concerning the nature of the substantive evil to which the resolution is addressed. We cannot conceive how it could be something other than the evil of ideas. However, even assuming that there are certain limited classifications of ideas which Congress could censor through the investigation process, the fact remains that it has drawn a resolution which authorizes an extraordinary roving inquisition into all manner of opinions, beliefs, ideas and speech. The threat which is posed by the resolution is not abstract or hypothetical: it is concretely established by the interpretations of the committee. Surely the Court must agree that the number of innocent victims of the resolution is far more impressive than any legitimate goal which could be speculatively ascribed to the resolution. One has but to glance at the remarkable range and consistency of the committee's censorship activities to recognize that more compelling considerations than have ever before moved the Court to invalidate legislation on its face are present here. Compare *Thornhill* v. *Alabama*, 310 U. S. 88; *Winters* v. *New York, supra; Stromberg* v. *California*, 283 U. S. 359, 369; *Herndon* v. *Lowry*, 310 U. S. 242, 258.

In none of the above-cited cases did the statute authorize or make possible the far-reaching abridgments of constitutionally protected rights which this resolution authorizes. In none of them was there presented the same combination of vagueness and extreme over-regulation. Professor Paul A. Freund has written:

> "The problem of an overbroad statute, whether in the field of civil liberties or elsewhere, is really a special case of the problem of vagueness. A statute which is vague and indefinite—which prohibits, for example, 'unreasonable prices'—is of course insupportable unless

> what is indefinite is made definite in advance by authoritative construction. Essentially the same vice inheres in a statute that is overbroad. The terms themselves are not vague; a ban on all picketing is superficially precise. Yet the clarity of its language is delusive, since it will have to be recast in order to separate the constitutional from the unconstitutional applications. If it is read as applicable only where constitutionally so, the reading uncovers the vagueness which is latent in its terms.
>
> "* * * The public interest in freedom of expression may serve to invalidate an overbroad statute that casts a cloud on expression both within and without the constitutional boundary.
>
> "Can an overbroad statute be saved by construction? If the limiting construction is a relatively simple and natural one it can probably be made to save the statute." [49]

Certainly a limiting construction of the resolution would not be "a relatively simple and natural one." As we have stated, the resolution is unconstitutional at its core. Moreover, to construe the resolution as authorizing only constitutional inquiries would be to ignore the background of the resolution, its language, as well as the committee's operations and activities under it for the past fifteen years. Nor does the resolution contain any standards which could be used in narrowing its scope.

The government may seek support for the resolution in the contention that the time has come when public discussion of dangerous or controversial doctrines must be suppressed or investigated. But the convenient *mystique* of security cannot change the fact that the First Amendment would be meaningless if the government had power to decide that people could not be trusted to choose for themselves. In this democracy "freedom to differ is not limited to things that do not matter much." *West Virginia Board of Educa-*

[49] *The Supreme Court and Civil Liberties*, 4 Vanderbilt L. Rev. 533, 540 (1951).

tion v. *Barnette*, 319 U. S. 624, 642. See also *Whitney* v. *California*, 274 U. S. 357, 377.

Another theory upon which the government might conceivably rely in support of the resolution is that "un-American" and "subversive" propaganda may be treated as per se punishable in the same manner as slander or obscenity. Such a view, we are confident, would not be seriously entertained by the Court, for to accept it would fatally compromise the principles which identify and distinguish our political system.

Nor will it do to urge that the resolution is safe from condemnation on its face by the fact that speech is only "investigated" and not punished or prohibited. As we have suggested, the committee is not engaged in the abstract cataloguing of ideas. Under the committee's terms of reference, it must at a very minimum label ideas and doctrines as dangerous and false, and no standard limits the committee beyond its subjective prejudice and personal interest.[50] This is a serious form of censorship. As Judge Edgerton put it in his dissent in *Barsky* v. *United States*, 167 F. 2d 241, 255:

> "That the committee's investigation does in fact restrict speech is too clear for dispute. The prosecution does not deny it and the court concedes it."

Indeed, the committee's investigations have produced a powerful deterrent effect on all freedom of discussion.

> "The effect is not limited to the people whom the committee stigmatizes or calls before it, but extends to others who hold similar views and to still others who might be disposed to adopt them. It is not prudent to hold views or to join groups that the committee has condemned. People have grown wary of expressing any unorthodox opinions. No one can measure the inroad the committee has made in the American

[50] As we shall show in the next point of this brief, the committee implements the resolution through a novel system of mass persecution which it calls "exposure."

> sense of freedom to think. There has been some suggestion that it restrains only timid people. I think it nearer the truth to say that, among the more articulate, it affects in one degree or another all but the very courageous, the very orthodox, and the very secure" (*ibid.*).

Two cases which have sustained the resolution have relied heavily upon the view that the First Amendment does not limit the power of inquiry. *Barsky* v. *United States*, *supra*, at 246, but compare 250; *United States* v. *Josephson*, supra, at 88, 89.[51]

The *Rumely* case, 345 U. S. 41, establishes the error of this view, as it does of the notion also expressed in both cases, that the possibility of production of valid legislation by the committee is sufficient to justify the constitutionality of the resolution. There need only be added here that the First Amendment limits *all* powers of Congress, that the authority of the committee is based on a statute which is obviously subject to the same constitutional limitations as every other congressional act.[52]

Surely it is irrational to attribute an immunity from the First Amendment to an implied power, the investigative power, which the expressly delegated powers do not enjoy. And the notion that the constitutionality of the exercise of the power of inquiry is measured by the existence of a possibility that valid legislation will emerge from the inquiry is particularly unfortunate when applied to this resolution. Congress intended that the primary function of the committee be investigative; indeed it is the only

[51] See also to the same effect *Morford* v. *United States*, 176 F. 2d 54, reversed on other grounds 339 U. S. 258; *Marshall* v. *United States*, 176 F. 2d 473, cert. denied 339 U. S. 933; *Lawson* v. *United States*, 176 F. 2d 49, cert. denied 339 U. S. 934; *Eisler* v. *United States*, 170 F. 2d 273, cert. granted 335 U. S. 857, removed from the docket 338 U. S. 189.

[52] Compare *Jones* v. *Opelika*, 316 U. S. 584, 609 (dissent, adopted as majority view in 319 U. S. 103).

permanent committee which enjoys a purely investigative jurisdiction. Since the committee's legislative output is so meager and its investigative activity so prodigious, the test of ultimate legislation would immunize for all time from constitutional redress the most outrageous assaults upon the liberties of the people. The *Barsky* and *Josephson* decisions have needlessly complicated the matter. Since the uniquely distinguishing characteristic of the functioning of the committee is the exercise of the power of inquiry for purposes of investigation rather than legislation, the congressional act authorizing the exercise of that power must conform to the First Amendment, rather than the legislation which it is not its primary function to produce. The Constitution does not tolerate such evasions.

POINT II

The pattern of the committee's functioning since its creation establishes the unconstitutionality of the resolution.

In the previous point of this brief we demonstrated that the bare terms of the resolution and the manner in which the committee has interpreted those terms are in irreconcilable conflict with the First Amendment.

The contentions already presented, we submit, give the Court no alternative but to set aside the resolution. However, the Court is not, in its evaluation of the committee and the resolution, remitted to the bare language of the resolution or to a formal gloss on its terms. The committee has been in existence for some fifteen years. During th[illegible] period of time, it has built a mountain of hearings, produced numerous reports and carried on intensive investigative activities.

The constitutionality of the committee may therefore be tested not merely by the language of the resolution, as on a

motion to dismiss, but also on the basis of an analysis of the lengthy record which the committee has made, fully documenting its view of its powers, its conception of its objectives, the methods of its operation and its role in our scheme of government. A study of this record confirms in detail what has already been said with respect to the vagueness and range of the resolution. In addition, it brings into focus the following constitutionally significant perspectives:

> *The committee does not investigate, as that term is limited and defined by the Constitution and the decisions of this Court. It conducts a form of ideological warfare against people and associations. The outstanding characteristic of its activities is a system of exposure which is a program of mass persecution of individuals and organizations because of their political views and affiliations.*
>
> *The exposure formula contemplates a deliberate destruction of the personal and private rights and interests of the witnesses called before the committee.*
>
> *The resolution as the committee has consistently applied it authorizes a sharp abridgment of the right to association and to engage in concerted activity, protected by the First Amendment.*
>
> *The committee has used the investigative power to convert itself into a new kind of tribunal which is not authorized by our constitutional system.*

A. The committee as an instrumentality for attacking individuals.

The censorship system only begins with stigmatizing the idea, cause, movement or organization. The committee discovered rather early in its functioning that attacks upon individuals serve its censorship purposes far more effectively than attacks upon the content of ideas. The

committee's attack upon individuals is not incidental to some other objective. It does not, and is not intended to, serve some ultimate legislative purpose. Nor is it a means of identifying the sources of propaganda—it is an end in itself.

1. The exposure system.

What emerges from the committee's functioning over the past fifteen years as the characteristic end product is not an analysis of propaganda, but an attack upon people—thousands of them. The term which best describes this aspect of the committee's functioning is "exposure"; indeed this is the term most commonly used by the committee itself. It is the purpose and function of the committee to prejudice an individual as much as possible and then to leave him so situated that the strongest possible sanctions may be used against him. The "public opinion" which the committee relies on as its principal weapon is really the stimulation of economic sanctions, social ostracism, violence and other forms of persecution. A person exposed by the committee may lose his job, his professional career may be destroyed, his social and family relationships ruined and his reputation injured beyond repair. He may find himself subject, as the result of the committee's pressure, to criminal prosecution and deportation proceedings.

It would be naive to suppose that the committee regards the injuries resulting from its exposures as an unfortunate or regrettable aspect of its functioning. The use of the exposure device as a means of causing prejudice to the person is freely admitted throughout the history of the committee.[53]

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[53] (a) Statement of Congressman Dies, first chairman of the committee, on the floor of the House when the committee was first created:

"I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that ex-

(Footnote Continued on Page 58)

The chairman of the subcommittee who presided over e hearing in this case repeatedly referred to the committee's "exposure" functions. His response to petitioner's

(Footnote Continued from Page 57)

posure in a democracy of subversive activities is the most effective weapon that we have in our possession. Always we must keep in mind that in any legislative attempt to prevent un-American activities, we might jeopardize fundamental rights far more important than the objective we seek, but when these activities are exposed, when the light of day is brought to bear upon them, we can trust public sentiment in this country to do the rest." 83 C. R. 7570 (1938).

(b) 1939 committee report.

"While Congress does not have the power to deny to citizens the right to believe in, teach, or advocate communism, fascism, and nazism, it does have the right to focus the spotlight of publicity upon their activities * * *." 76th Cong., 1st Sess., H. Rept. 2, 13.

(c) 1940 committee report

"One method which can and should from time to time be used is the method of investigation to inform the American people of the activities of any such [subversive] organizations in their nation. This is the real purpose of the House Committee to Investigate un-American Activities." 76th Cong., 3d Sess., H. Rept. 1476, 1, 2.

"The purpose of this committee is the task of protecting our constitutional democracy by turning the light of pitiless publicity on the activities of organizations seeking to work the will of foreign dictators in the United States or to destroy our constitutional democracy and set up a totalitarian regime * * *." *Ibid.* 24.

(d) 1941 committee report.

"It is the way of exposure—a way which conforms to the letter and spirit of democracy, and is at the same time more effective than a Gestapo.

* * * * * *

"This committee is the only agency of government that has the power of exposure. No other agency can require witnesses to appear before it and testify under oath with respect to un-American activities and subversive propaganda. No other agency of government has the power to subpoena records and

(Footnote Continued on Page 59)

very first protest against the disclosures demanded of him was the statement that the exposure purpose justified them.

(Footnote Continued from Page 58)

documents of un-American organizations, and individuals, except under unusual circumstances. There are many phases of un-American activities that cannot be reached by legislation or administrative action." 77th Cong., 1st Sess., H. Rept. 1, 23, 24.

(e) In 1943, the committee, reporting that "discovery and exposure" were its "special function" by mandate from the House, published the names, positions and salaries of 563 government employees as members of the American League for Peace and Democracy. "* * * the committee felt that the Congress and the people were entitled to know who they were." 77th Cong., 2d Sess., H. Rept. 2748, 2, 4, 5.

(f) 1947 committee report.

"The Federal Bureau of Investigation is able to detect and apprehend criminal acts of un-Americanism; the House Committee on Un-American Activities is empowered to explore and expose activities by un-American individuals and organizations which, while sometimes being legal, are nonetheless inimical to our American concepts and our American future." 79th Cong., 2d Sess., H. Rept. 2742, 16.

(g) Statement by Representative Thomas.

J. Parnell Thomas, when chairman of the committee, said in a radio address:

"The chief function of the committee * * * has always been the exposure of un-American individuals and their un-American activities. This is based upon the conviction that the American public will not tolerate efforts to subvert or destroy the American system of government, once such efforts have been pointed out. The Congress' right to investigate and expose undemocratic forces is as established and untrammeled as our Constitution." 93 C. R. A4277 (1947).

(h) Statements by Representative Rankin.

Mr. Rankin, a leading member of the committee, said in 1945:

"I serve notice on the un-American elements in this country now that this 'grand jury' will be in session to investigate un-American activities at all times." 91 C. R. 275 (1945).

"Mr. Rankin has said, in the present record, that the committee is a 'grand jury' to which 'defense counsel' should not

(Footnote Continued on Page 60)

And thereafter all petitioner's basic objections to the committee's inquisition were met by this same exposure justification (*supra*, p. 7).

2. The committee's exposure dossiers.

To fully comprehend the frightening numbers of persons affected by the committee's activities, one need only examine its proudly discussed "file and reference service." The committee understates the facts when it says that these "should not be thought of as files in the ordinary sense" [54] for indeed they are not. They are a "constantly growing" accumulation of information on individuals and organizations open to designated representatives of the executive branch and given out on request to members of Congress and private individuals. The committee boasts that

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(Footnote Continued from Page 59)

be admitted" (Judge Edgerton in *Barsky* v. *United States*, *supra*, at footnote 19).

(i) Statement by Representative Mundt.

"Our task—to which you members of this House assigned us—is to seek out and to expose those activities which although legal are nonetheless un-American, subversive, and contrary to the American concept.

* * * * * * *

"May I interpolate here, Mr. Speaker, to remind the House that in voting favorably as it did on the contempt citations which our committee has brought before you that you stand foursquare with that great constitutional lawyer, Mr. [John W.] Davis, who recommends that the spotlight of publicity be turned on organizations suspected of subversive activities." 92 C. R. 5217 (1946).

(j) Statement of Representatives Mundt and Nixon.

"If this committee is not to operate entirely in secret, it cannot avoid making headlines unless it avoids activities in fulfillment of its mandate from Congress to help disclose and curb un-American activities." "Mundt-Nixon Proposals" (for reform of committee procedure) of Dec. 27, 1948, in *New York Herald Tribune*, Dec. 28, 1948, 19.

[54] *Annual Report* 1952, 77.

> "The reference service furnished during this year [1952] has shown a steady increase, reflecting a greater growth in the amount of information requested and furnished than in the actual separate requests made."[55]

The growth of the committee's file service is reflected in its own figures. By the end of 1948, the committee had compiled reports on 25,591 persons and 1,768 organizations at the request of members of Congress. There were 300,000 card references to activities and affiliations of individuals. There were separate files maintained on the activities of 3,040 persons, "top leaders" and "prominent fellow travelers" of the Communist Party. There were lists of signers of Communist Party nominating petitions in twenty states for various years, with 363,119 signatures. "Since subversive forces try to infiltrate other organizations * * * the committee has acquired a vast store of information concerning thousands of organizations in the United States"—so huge is the number that the committee tells us only that there are 380 organizations filed under the letter "A". The reports of the investigators referred to 15,825 organizations. During 1947 and 1948 representatives of various government agencies made 5,975 visits to committee file rooms.[56]

In 1949 the committee reported that it had accumulated more than a million documents and records. The card references to activities and affiliations of individuals were increased to 470,000. During 1949, liaison agents from government agencies made 3,956 visits to the files section.[57]

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[55] *Ibid., 77-78.* The files on Bishop Oxnam, for example, were released to leaders of his church. *G. Bromley Oxnam,* 111. The committee files on Professor Burgum were lent to New York University for use by the university in its dismissal proceedings against him. See *Matter of Hearings on Charges Against Associate Professor Edwin B. Burgum before Senate Faculty Committee,* New York University (1953), 118-119.

[56] *Report,* Dec. 31, 1948, 21-24.

[57] *Annual Report,* 1949, 18-21.

During 1950, more than 300,000 pieces of new material were added to the committee's "collection." The card references increased to over half a million. Individual files on some 4,000 "leaders" of various organizations were maintained. Executive branch agents made 3,600 visits to the committee's files section, checking for information concerning more than half a million persons. Staff members answered 2,600 requests made by members of Congress for information on 5,167 individuals and 1,917 organizations.[58]

In 1951, there were over 6,300 visits by government agents who checked an estimated three-quarters of a million names through the committee's files.[59]

By the end of 1952, the committee reported over 3,600 inquiries involving 9,500 individuals and 2,000 organizations. Members of Congress received 1,440 written reports totalling over 10,000 pages and about 1,000 verbal replies. Government agents made 6,260 visits and checked the names of 840,000 individuals through the committee records.[60]

Although the committee gives no information in its reports concerning the extent of the data furnished to private non-governmental inquirers, it should be borne in mind that an opportunity for indirect private inquiry exists through

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[58] *Annual Report*, 1950, 40-43. It has been charged by Committee Member Voorhis that "It has become a practice in the House for members to call up the Dies committee and ask for a report on this or that individual against whom they desire to speak." 88 C. R. A725 (1942).

[59] *Annual Report*, 1951, 24-26.

[60] *Annual Report*, 1952, 77-79.

members of Congress, who have easy access to information contained in the files.[61]

The scale of the accumulation and publication of names in the recent work of the committee is best demonstrated in its last two annual reports. During 1951, the committee report for that year boasts, "hearings disclosed the positive identification of more individuals as members of the Communist Party than during any preceding year in the history of the committee." [62]

The 1952 report reveals how intensely the committee is now pursuing individuals. Out of 89 pages in this report, the committee has devoted approximately 54 pages, or about 60 percent, to listing the names of individuals named as Communists before the committee during the year, together with the names of the informants who so designated them.[63] This then was the most significant achievement of the committee in the year 1952. We leave to the ingenuity of the government to discover some legislative purpose in the establishment of this vast political identification system and to find an explanation of how it differs from the political dossiers of totalitarian regimes. In the ordinary citizen it inevitably creates the fear that his views and associations are under constant scrutiny from Washington and may be entered in a card index or file folder. If the committee's files continue to grow at their present pace,

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[61] When criticized by one of its witnesses for releasing unevaluated evidence from its files, the committee justification, stated by the chairman, was:

> "* * * you indicated that you didn't know about your being listed on letterheads of certain organizations until you learned through our files that you were listed. I feel you, as a good American citizen, should appreciate the fact that our committee made this knowledge about you available." *G. Bromley Oxnam*, 122.

[62] *Annual Report*, 1951, 6.

[63] *Annual Report*, 1952, 12-27, 29-34, 36-39, 41-56, 58-67, 68-69, 70-73.

it will require only a few decades to have the entire nation dossiered. Instead of the telescreen of Big Brother in Orwell's *1984*, we shall have the "file and reference service" in every home.

3. The committee as inquisitor into political affiliation and private association.

It is standard committee practice and a keystone of the exposure system to ask witnesses under oath and threat of contempt sanctions what their political views are and whether or not they are members of named political and other organizations. The committee begins, but does not end, with questions concerning Communist Party membership. In this case, for example, petitioner was asked questions not only concerning Communist Party membership, but membership in other organizations as well. *Supra*, pp. 6-7. It must be remembered that the committee views itself as having been "empowered to explore and expose activities by un-American individuals and organizations which, while sometimes being legal, are nonetheless inimical to our American concepts and our American future."[64] The committee is "concerned with activities that aid and abet Communist movements and with people who assist Communist movements, wittingly or unwittingly."[65]

In addressing one witness, the committee asserted:

> "The committee considers the Communist Party of the United States to be a subversive organization, and the testimony or activities of any individual connected with the Communist Party of the United States is considered to be the purview of this committee's authority.
>
> "There has been considerable testimony before the Special Committee on Un-American Activities, and this committee, its successor, which link you with the activities of the Communist Party.

[64] 79th Cong., 2d Sess., H. Rept. 2742 (1947), 16.

[65] *G. Bromley Oxnam*, 121.

"The questions which will be asked you this morning will be aimed at determining the facts, and it is therefore requested that your answers be responsive and direct." [66]

Another witness was told: "The chief purpose of your testifying before this committee is due to the fact that it had information you were a Communist," and "That is the reason you are here before this committee." [67]

In the motion picture industry hearings in 1947, ten witnesses, called because they were suspected of being Communists, refused to answer the questions concerning membership in the Communist Party and were summarily dismissed. Immediately after a witness was removed from the stand, the committee resorted to a technique which had clearly been planned for just the occasion, and which revealed its true purpose in requesting the attendance of the witnesses. The committee called to the stand one of its own investigators and read into the record a detailed dossier which it had assembled on the previous witness, tending to prove the affiliation of such witness with the Communist Party.[68]

This purpose was also illustrated when, in response to a protest against the question by one of the witnesses, the committee declared: "Mr. Lawson, the most pertinent question that we can ask is whether or not you have ever been a member of the Communist Party. Now, do you care to answer that question?" When the witness again refused to answer that question, the committee retorted, "We are going to get the answer to that question if we have to stay here for a week." [69]

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[66] *Gerhart Eisler* (1947), 2.

[67] 1 *Investigation* (*Exec.*), 86-87.

[68] *Motion Picture Industry* (1947), 296-304, 334-342, 370-382, 388-393, 405-411, 415-418, 462-464, 468, 483-486, 489-491.

[69] *Ibid.*, 294.

A similar pattern was apparent in the hearings conducted in Detroit. Many witnesses were subpoenaed to appear for the single purpose of testifying as to their suspected or alleged membership in the Communist Party. When these witnesses refused to disclose whether or not they were or had been members of the Communist Party they were summarily dismissed.[70]

One such witness was excused even though he admitted having once been a member of the Communist Party.[71] The committee's primary interest in establishing an individual's past or present membership in the Communist Party is further illustrated by its statement to one witness, who after being admonished not to make speeches charged that a friendly witness had been allowed to speak extensively that very morning: "If you will admit you are a Communist, I will sit here until midnight and listen to you." Chairman Wood immediately volunteered, "So will I, or if you will deny you are a Communist, I will do the same thing."[72]

The committee conducts extensive inquisitions into the witness' association with an almost endless variety of organizations in order to expose him as a "subversive." In this respect its hearings proceed along two parallel lines: it seeks to establish, on the one hand the individual's associations with particular organizations and, on the other, that these organizations are subversive.[73]

Sometimes the committee finds it necessary to conduct a general inquisition into a witness' organizational ties.

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[70] 2 *Detroit Area* (1952), 3091, 3092, 3095, 3096, 3099, 3102, 3105, 3107.

[71] *Ibid.*, 3094.

[72] *Ibid.*, 3109-3110; see also 3098.

[73] A fair sample of this technique is the hearing of Bishop Oxnam. See also, for example, 4 *Investigation (Exec.)*, 1751-1753. There are few hearings in which it is not employed. We deal below with the role of the "subversive" organization in the committee's operations.

Thus, one witness was asked by Congressman Thomas: "* * * will you tell the committee the names of all the organizations that you had been a member of? I mean all kinds of organizations, every kind of organization you can think of?" When Congressman Rankin inquired whether the question referred to "fraternal organizations," Mr. Thomas replied: "I mean every kind of organizations. I don't care what it is."[74] One witness was subjected to a series of such questions: "Are you a member of the Elks' Club?" "Are you a member of the B'nai B'rith Lodge?" Are you a member of any of the Masonic fraternities?" Are you a member of any of the lodges identified with any religious organization in this country?" "Are you a member of any of the established automobile clubs in this country, such as the A. A. A.?"[75] Another witness was asked, "Did you ever belong to the Elks?" "Did you ever belong to the Knights of Columbus?"[76] Still another witness was asked, "Are you a member of any social or civic organizations?" When she responded in the negative, she was asked, "Have you ever been?"[77] One witness was asked, "Are you active in supporting the Elks?"[78]

Here, again, it is manifest that exposure rather than legislation explains the committee's conduct.

4. The committee as inquisitor into private opinion, belief and other personal matters.

In its efforts to "expose" the subversive activities of witnesses, the committee pursues its quarry into every area of opinion, belief and attitude, however personal and remote.

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[74] *Gerald L. K. Smith* (1946), 23.

[75] 1 *Motion Picture Industry* (1951), 60.

[76] 1 *Chicago Area* (1952), 3699.

[77] *Infiltration—Government* (1952), 3364.

[78] 1 *Investigation (Exec.)*, 40.

When one witness was asked whether or not he was married during a particular period, he inquired, "* * * is the matter of my marriage or my personal relations pertinent to this inquiry?" and the committee responded, "It certainly is." When the witness insisted, "I still don't understand in what respect this question is pertinent to the inquiry of this committee," the committee demanded, "Do you think an answer to that would incriminate you?" [79]

The committee has also found relevant to its purpose information gained from answers to the following questions: "Where were your parents born?" "Were they naturalized citizens of the United States?" [80] "What is the largest annual salary that you received while being employed or engaging in your profession in Hollywood?" [81] "If it isn't too personal, can you tell me how old your kiddies are?" [82]

One witness was asked, "Did you ever attend union meetings or other meetings of organizations which you said you belonged to at one time, at which colored people were present?" [83] Another time, a witness was asked, "Did you entertain any Negroes in your apartment, members of the Communist Party, in Knox County?" [84]

Witnesses are often subjected to a searching probe into their personal beliefs and sympathies respecting political matters, e.g., "What are your politics?" [85] "Do you believe

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[79] 1 *Motion Picture Industry* (1951), 117.

[80] 2 *Infiltration—Education* (1953) 182-183.

[81] 3 *Motion Picture Industry* (1951) 717.

[82] 3 *Los Angeles Area* (1953) 680.

[83] 3 *Investigation* (*Exec.*) 1019.

[84] *Ibid.*, 1016. We deal below with the committee's practice of compelling witnesses to act as informers.

[85] 4 *Investigation* (*Exec.*) 1774.

in communism?" [86] "Do you subscribe to the principles of the Communist Party?" [87] When one witness replied that he did not believe in communism, he was asked whether or not he believed in the "common ownership of property." [88]

Similarly, witnesses have been asked, "Are you in sympathy with the Communist Party?" [89] or "Do you approve of communism as a philosophy of government?" [90] When one witness, in response to such a question, professed ignorance of the nature of communism and exhibited a consequential reluctance to pass judgment thereon, the following colloquy between the committee and the witness ensued:

> "The Chairman: You do not know what communism is, yourself; therefore you do not know whether you are sympathetic with it, or not?
>
> Mr. Gift: I know everybody I see has a different opinion about it, so I don't know.
>
> The Chairman: Well, what is your opinion about it?
>
> Mr. Gift: Well, it is more or less confusion to me; I cannot make heads or tails of it.
>
> The Chairman: You do not know what it is all about?
>
> Mr. Gift: No.
>
> The Chairman: What do you think about Soviet Russia; do you have any opinion on that?
>
> * * * * * *
>
> The Chairman: Do you approve of the Soviet Union, or not; cannot you say that?
>
> Mr. Gift: No; I cannot say that I do.
>
> The Chairman: You cannot say you do.
>
> Mr. Gift: No.
>
> The Chairman: Well, from what you know of communism, do you believe in it, or don't you believe in it, from what you know about it?

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[86] 1 *Investigation (Exec.)* 115.

[87] *Ibid.*, 109. See also *ibid.*, 65, 86-87, 126, 250, 317.

[88] 3 *Investigation (Exec.)* 1352-1353.

[89] 1 *Investigation (Exec.)* 123; see also *ibid.*, 87.

[90] *Ibid.*, 317.

Mr. Gift: I don't know anything about it.

The Chairman: Well, you have been taking the Daily Worker for a year; haven't you been reading it?

Mr. Gift: Yes, sir.

The Chairman: From what you read in the Daily Worker, what opinion have you formed?" [91]

The denial by a witness of sympathy with communism or the Communist Party does not serve to relieve him of further inquisition:

"Mr. Starnes: You are in sympathy with the Communist Party program?

Mrs. Williams: No; I wouldn't say so. I am not interested. Let us put it that way.

Mr. Starnes: Aren't you interested in the program of extending universal suffrage?

Mrs. Williams: I am interested in that?

Mr. Starnes: You are an advocate of that?

Mrs. Williams: Yes.

Mr. Starnes: And the Communist Party is an advocate?

Mrs. Williams: True, but that does not follow——

Mr. Starnes: You are interested in the raising of wages, and the standard of living.

Mrs. Williams: True.

Mr. Starnes: You said the Communist Party was?

Mrs. Williams: Yes, but also, wait a minute——

Mr. Starnes: Then you are in sympathy, then with that aim of the party?

Mrs. Williams: With that aim?

Mr. Starnes: And with the other aim." [92]

Some witnesses have even been questioned on their exercise of the right to vote. One witness was asked whether or not he had voted for Benjamin J. Davis, Jr. for the office of City Councilman of New York City.[93] Another witness was asked, "Did you ever solicit anyone to vote for

[91] 1 *Investigation (Exec.)* 91, 92.

[92] 3 *Investigation (Exec.)* 1299-1300.

[93] 3 *Motion Picture Industry* (1951) 667.

Earl Browder for President?" When he replied in the negative, the committee continued, "Did you ever vote for him yourself?" [94]

The questioning of witnesses has frequently been carried to the point of requiring them to give their opinion with respect to purely hypothetical political situations:

> "If the United States should become involved in a war with Russia, would you support the United States or Russia?" [95]
>
> * * * * * *
>
> "If there was a war between the United States and Russia would you support and defend the United States?" [96]
>
> * * * * * *
>
> "Suppose we were at war with Russia, what would be your position as between the United States and Russia? Would you favor the United States or Russia?" [97]

Witnesses are frequently asked their opinions with respect to controversial social and political issues:

> "The Chairman: Do you approve of the Communist program that Negroes ought to be given the right to vote?
>
> Mr. Brown: They are supposed to have the right to vote at the present time.
>
> The Chairman: Do you subscribe to that belief?
>
> Mr. Brown: I don't think that anyone should be barred from voting on the basis of race or color.
>
> The Chairman: That is the Workers Party position?
>
> Mr. Brown: It is also the position of the democratic countries.

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[94] 3 *Investigation (Exec.)* 997.

[95] 1 *Motion Picture Industry* (1951) 62.

[96] 1 *Investigation (Exec.)* 107. See also *ibid.*, 115, 126; 2 *Motion Picture Industry* (1951) 470.

[97] 1 *Investigation (Exec.)* 44.

The Chairman: It is part of the program of the Workers Party to give the Negro the ballot throughout the United States, isn't that right?

Mr. Brown: I thought it was the program of all parties.

The Chairman: Well, I say isn't that the Workers Party program—never mind about race.

Mr. Brown: I would suppose it is part of it.

The Chairman: Well you have the literature here. If you don't know, you don't know.

Mr. Brown: Well, I would be able to say that with surety.

The Chairman: Do they advocate social equality between the Negro and white races?

Mr. Brown: I think so.

The Chairman: Do you believe in that?

Mr. Brown: It all depends on what you mean by that.

The Chairman: You know what social equality is?

Mr. Brown: Equal rights—certainly.

The Chairman: But as to intermarriage, and social affairs on an equality, and general intermingling of the races?" [98]

In the same vein, another witness was asked with respect to relations between Negroes and whites, "Do you believe in intermarriage between them?" "You would not favor a law prohibiting such intermarriages, would you?" "And you would oppose a law that would prevent that, or that would prevent such intermarriages?" "You would oppose any law that would prevent marriage between white and black people?" [99]

When one witness admitted having subscribed to the *Daily Worker*, he was asked, "Do you subscribe to the labor policy of the Communist Party as it is laid down in the *Daily Worker?*" After he stated that he did not know whether he did or not, the committee asked, "Well, do you think it is sound, do you believe in it?" When he ex-

[98] 3 *Investigation (Exec.)* 1341.

[99] 1 *Investigation (Exec.)* 42.

pressed his lack of interest, the committee insisted, "* * * I ask you, do you approve of the tenets, the labor tenets, of the Communist Party as they are laid down in the *Daily Worker*. You have read them over a period, a general period of time, according to your testimony. Now, do you approve of those, or do you not?" [100] Another witness who admitted that he was "familiar with the hostilities going on in Korea," was asked, "With which side in that conflict do your sympathies lie?" [101]

Asked whether or not he approved the course of action taken by this country in Korea, another witness protested that the committee was invading his right to personal opinion; whereupon the committee replied: "Every American citizen, Mr. Gordon, has an opinion with respect to the actions of this country in Korea. It is not invading the realm of opinion. Either you approve of it or you don't approve of it. I think it is a very simple question and could be answered very simply by 'Yes' or 'No'." [102]

When another witness refused to disclose his opinion with respect to a question propounded to him by the committee, he was asked "Do you understand you are thereby implying to this committee that you may be a Communist or you approve of the Communist doctrine when you refuse to take a stand?" [103]

Witnesses have even been queried with respect to their religious beliefs, identifications and affiliations:

> "Are you a Gentile or a Jewess?" [104]
>
> * * * * * *
>
> "Mr. Barker: Mr. Levinson, Mr. Chancey said you were a Jew; is that correct?

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[100] *Ibid.*, 93.

[101] 1 *Detroit Area* (1952) 2769.

[102] 4 *Motion Picture Industry* (1951) 1487.

[103] 3 *Infiltration—Education* (1953) 994.

[104] 1 *Investigation (Exec.)* 64.

Mr. Levinson: That is correct.
Mr. Barker: Are you an orthodox Jew?
Mr. Levinson: No.
Mr. Barker: Are you an atheist?
Mr. Levinson: I do not believe in God, if that is what you mean." [105]

* * * * * *

"Are you a member of any church?" [106]

* * * * * *

"Do you belong to any church? Do you recognize the Supreme Being?" [107]

* * * * * *

"The Chairman: Are you an atheist, or do you believe in God?
Miss Brooks: Well, I was not taught to believe in any God, and I do not suppose I do.
The Chairman: You were not taught to believe in God?
Miss Brooks: No.
The Chairman: Your parents are not orthodox Jews, in other words?
Miss Brooks: No." [108]

* * * * * *

"Are you a Jew?"
"Are you an orthodox Jew?"
"You do not attend the synagogue or go to church?"
"Are you an atheist?"

* * * * * *

The Chairman: Did not Lenin say that religion was an opiate for the people?
Mr. Chancey: Lenin did believe that religion was being misused by certain people.
The Chairman: I asked if he did not say that religion was an opiate for the people. Do you believe that?"

* * * * * *

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[105] *Ibid.*, 63.

[106] 3 *Motion Picture Industry* (1951) 667.

[107] *Labor Unions* (1947) 114.

[108] 1 *Investigation (Exec.)* 66.

"You do not have any religion, do you?" [109]

* * * * * *

"There is one other question that we always ask for the record: Are you a Jew?" [110]

We find it difficult to ascertain any valid legislative purpose in all of this.

5. The use of the record to expose and punish.

In a large number of cases, the committee does not ask questions and compel answers of the witness in order to obtain information about him. It has already obtained such information and formed conclusions. The principal purpose of the oath *ex officio*, which is its chief stock in trade, is to make more effective and efficient the exposure system. By bringing to bear upon the individual in a dramatic way the full force of governmental disapproval of his political views and affiliations, the committee is ensured that the individual's recalcitrance will be justly punished.

The purpose to punish is crudely revealed when the committee repeatedly requires witnesses to state their home and office addresses publicly, although this information presumably has already appeared on the subpoena. Where the witness has expressed reluctance to state his address, the committee has compelled him to give the information.[111]

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[109] *Ibid.*, 27, 38, 43.

[110] 9 *Investigation* 5487.

[111] The following exchanges are typical:

"Mr. Moulder: Where is your office located from which you engage in the practice of law?

Mr. Steinmetz: In the city of Los Angeles.

Mr. Moulder: In what building and what office number?

Mr. Steinmetz: Does that have any pertinency? * * *

Mr. Moulder: To properly identify you, as to who you are. We are trying to designate as to just exactly who you are.

Mr. Steinmetz: I believe it is in the telegram as correctly stated there, Mr. Moulder. That is the telegram which I received summoning me to this postponed hearing.

(Footnote Continued on Page 76)

Even when the witness pleads with the committee that previous disclosures have resulted in molestation, it does not relent.[112] The committee has required one witness to restate his address at the conclusion of a line of questions to which the privilege against self-incrimination had been invoked, thus using it as a punishment for non-cooperation.[113] One witness was required to give, in addition to his address, his telephone number and social security number.[114] This practice is all the more noteworthy in view of the committee's agreement on some occasions that ad-

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(Footnote Continued from Page 75)

Mr. Moulder: Then do you refuse to answer that question?

Mr. Steinmetz: Well, my address, as I say, is correctly stated in the telegram, I believe you have a copy."

(Witness answers question) 3 *Los Angeles Professional Groups* (1952) 3912.

"Mr. Kunzig: What is your address, Professor?

Mr. Glasser: My mailing address, the record may show, is * * *. I am not giving my home address. I think you want identification of a mailing address. * * *

Mr. Kunzig: I would like to ask for your home address, and I hereby ask your home address. * * *

Mr. Doyle: Mr. Chairman, this witness is the same as any other American citizen, and we are entitled to have his residence address, and I ask that it be given.

Mr. Glasser: Under the——

Mr. Velde: Yes, the Chair decides or feels very definitely there is no reason why you should refuse your home address, and I direct you to answer that question, Professor.

Mr. Glasser: I will answer it, sir. I am going to answer it—under protest, my reason being fear of harassment.

Mr. Clardy: Mr. Chairman, may I ask that he be instructed to proceed with the answering and stop making speeches." 2 *Infiltration—Education* (1953) 181-182.

[112] See, e.g., 2 *New York City Area* (1953) 1245, witness refuses address because on a previous occasion "we had many anti-Semitic letters;" 5 *New York City Area* (1953) 2005, witness required to give address publicly after requesting that it be taken in executive session, witness explaining, "We have been molested every time there was such a hearing;" *ibid.*, 2006, "I have small children and we have been molested by some hoodlums."

[113] *Infiltration—Government* (1952) 3346, 3352.

[114] 1 *Detroit Area* (1952) 2805-2806.

dresses need not be publicly stated. Thus, the chairman did not insist when he received a negative reply from a cooperative witness to the question: "You do not want to give your street address? There is no necessity for giving your street address?" [115] And another cooperative witness was similarly not pressed:

> "Mr. Tavenner: What is your residential address?
> Mr. Pressman: Is there need for that, Mr. Chairman, to be in the record?"
> (No further questions on address.) [116]

The committee endeavors to force public testimony concerning information already verified in its records. Thus, one witness was asked:

> "Mr. Kunzig: * * * were you ever at any time suspended by the Department of Justice of the United States of America?
> Mr. Glasser: The committee has that information * * *." [117]

Another was asked about the content of the courses he taught, and when he demurred, was told:

> "The committee knows what you are teaching, and we merely want to get that one in the record. I think he should be directed to answer that question, Mr. Chairman." [118]

Witnesses have been asked to identify papers bearing their signatures or pictures so that the committee might make public the existence of the evidence.[119]

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[115] 1 *Investigation* 727.

[116] 2 *Communism in the Government* (1950) 2847.

[117] 2 *Infiltration—Education* (1953) 196.

[118] 4 *Infiltration—Education* (1953) 1137.

[119] 1 *Motion Picture Industry* (1951) 179-185; 2 *Motion Picture Industry* (1951) 319-320; 2 *Chicago Area* (1952) 3804-3805, 3808-3809; 2 *Detroit Area* (1952) 3004-3005.

The patent unfairness of this practice is obvious even to committee members. When Larry Parks was asked to identify certain persons as Communists, and demurred, Congressman Walter asked:

> "How can it be material to the purpose of this inquiry to have the names of people when we already know them?" [120]

And Counsel Tavenner volunteered that certain questions he was putting to Parks, on the objects of various organizations, were

> "the subject of the testimony of about 20 witnesses or more here." [121]

Many have been required to appear before the committee in public session more than once, when there is good publicity value in a second hearing or when an anticipated discharge did not result from the first hearing. A recent example of this was the testimony of Professor Byron T. Darling of Ohio State University, who testified before the committee in March 1953 in Washington, in hearings concerning Communist infiltration into education.[122] He was recalled in June 1953, when a subcommittee chaired by Congressman Scherer of Ohio conducted hearings into Communist activities in the Columbus area.[123] Many of the questions asked in the second hearing had already been asked and answered in the first.[124]

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[120] 1 *Motion Picture Industry* (1951) 93.

[121] *Ibid.*, 94.

[122] 2 *Infiltration—Education* (1953) 129-154.

[123] *Columbus Area* (1953) 1795-1823. Other instances of duplication are: Charles Kramer, *Espionage in the Government* (1948) 818-835 and 2 *Communism in the Government* (1950) 2937-2950; Steve Nelson, *Hearings Regarding Steve Nelson* (1949) 129-153 and 1 *Radiation Laboratory* (1949) 315-316; Clarence Hiskey, *Excerpts from Atom Bomb Hearings* (1948) 1-9 and *Hearings Regarding Clarence Hiskey* (1949) 383-398.

[124] E.g., "state for the record your educational background;" "state for the record your employment record;" "have you ever traveled abroad?"; "when?"; "would you explain to the committee what that conference was?"; "Have you ever been a member of the Communist Party?"

The only rational explanation for the committee's practices discussed in this portion of the brief is that the committee is not concerned with obtaining information for legislative purposes but seeks rather to expose and punish.

6. The committee's need for informers in order to operate its exposure system.

Witnesses before the committee are divided into two groups, "hostile" and "friendly" witnesses. In order to earn the committee's approval as a friendly rather than a hostile witness, the individual is required not merely to identify his own political views and affiliations but must inform on others. If he is willing to do the one, but cannot bring himself to do the other, he is not deemed to be a friendly witness, and the committee will not give him a "clearance."

This demand for "names" is entirely logical since the life-blood of the committee is the exposure of a never-ending stream of individuals. Without "names" the committee would grind to a halt like a locomotive without steam.[125] The pressures to inform are not only contempt sanctions, but the harassment and blacklisting resulting from publicity.

The committee technique of soliciting from ex-Communists lists of the names of their former colleagues is well known, and in most hearings, constitutes the only "information" ever sought by this "legislative" committee. The testimony of most friendly witnesses is devoted to a brief description of the witness' past activities and a lengthy list of the persons with whom he was associated.[126] One, for

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[125] In order to supply its ravenous appetite for "names" the committee has increasingly resorted to the service of professional informers. See, for example, 5-8 *New York City Area* (1953).

[126] See, for example, *Cincinnati Area* (1950) 2661-2713, 2803-2821; 5 *Los Angeles Area* (1953) 867-900, 901-907; 1 *Chicago Area* (1952) 3632-3639; 4 *Motion Picture Industry* (1951) 1426-1434.

example, identified about two hundred persons as Communists.[127]

The committee's obsessive preoccupation with names was manifested when a former West Coast newspaperman turned over to the committee the names of a large group of alleged Communists. Committee member Jackson told the press that the list was "one of the choicest crops of Communists this committee has ever received."

The committee thus evaluated its motion picture investigation:

> "The committee's investigation of the motion picture industry was concerned almost entirely with the problem of exposure of the actual members of the Communist Party. * * *"[128]

The committee accumulates and publishes, in addition to the names of "subversives," those of "traitors,"[129] and of "subversives" who are citizens of and residing in other nations.[130]

While the source of the committee's lists is the testimony of "friendly" witnesses, the committee persists in questioning "hostile" witnesses concerning the affiliations and beliefs of others, with the knowledge that the mere mention of the name and refusal to testify in that context will stigmatize the individuals involved. Thus, the committee asked one witness questions concerning seventeen persons, although from the beginning it was apparent that he would not discuss them.[131]

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[127] Testimony of Harvey M. Matusow, *Youth Groups* (1952) 3273-3339; *Annual Report*, 1952, 70-73.

[128] *Annual Report*, 1951, 8. See also evaluation of Baltimore investigation, *ibid.*, 12. See also *ibid.*, 2; Thomas, *10 Years of Vigilance* (1948) 5, 6.

[129] *Annual Report*, 1951, 23.

[130] 1 *Albany Area* (1953) 2378-2379.

[131] 1 *Baltimore Area* (1951) 851-852. See also 3 *Infiltration—Education* (1953) 999-1102; 1 *Motion Picture Industry* (1951) 70-71; *Massachusetts* (1951) 1391.

The committee has demanded names where such information could be used only to harm persons who have no connection with the matter under inquiry. Thus, when two witnesses testified they ran a summer camp for children, the following exchange occurred:

> "Mr. Doyle: Counselors?
>
> Mrs. Granich: These are high school kids who help the kids have a good time.
>
> * * * * * * *
>
> Mr. Doyle: Tell me definitely the name of one counselor that you had last summer * * *. Tell me the name of one person.
>
> * * * * * * *
>
> Mr. Doyle: You would not have any hesitation about giving the names of your counselors in executive session, would you?
>
> * * * * * * *
>
> Mr. Doyle: * * * do you have a list of the counselors who were at your camp last summer?
>
> * * * * * * *
>
> Mr. Doyle: And the addresses of the counselors are on that list * * * are they not?" [132]

The committee is interested in adding to its dossiers not only high school children, but also persons who happen to attend social gatherings at which a Communist is present.[133]

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[132] *Communist Press* (1952) 2303-2306.

[133] Thus, Dr. Frank F. Oppenheimer, after testifying that he had met a prominent Communist on two occasions, was asked:

> "Mr. Velde: Was anyone with Steve Nelson when you met him?
>
> Dr. Oppenheimer: I met him at a social gathering where there were other people present.
>
> * * * * * * *
>
> Mr. Velde: Will you state the names of the other persons present?
>
> Dr. Oppenheimer: No.
>
> Mr. Velde: You do know the names of some of the people who were present?
>
> Dr. Oppenheimer: I do." 1 *Radiation Laboratory* (1949) 369-370.

The committee's unceasing efforts to force its witnesses to become informers has on some occasions encountered sharp resistance on moral grounds and on the ground that the committee already possessed the information sought.[134]

It should be noted that the committee was not always so insistent on the identification of individuals. In the period when the committee heard witnesses on the American nazi movement, it honored the request of a Bundist leader not to be required to furnish a membership list, on the ground that "* * * it may get into the hands of the enemy."[135]

When a witness voluntarily decides to be a friendly witness, or is forced by pressures to overcome his moral scruples, he is subjected to an intensive grilling concerning his former associates.[136]

[134] See, e.g., the testimony of Dr. David Hawkins:

> I have really no desire to inhibit or impede the investigations of your committee, sir; and if I knew of anything connecting individuals about whom I feel this hesitation with the radiation laboratory or with any crimes in which they might have been directly or indirectly involved, I would not feel any hesitation; but, not having such knowledge, I feel very deeply—and I am sure you will agree with this proposition—that there are certain fundamental relations of trust which tend to distinguish American society from other societies in the world today; and, unless this kind of question is to your knowledge directly or indirectly related to the subjects you are investigating, I would very much like to ask not to be asked such a question.
>
> "If there is information of this sort that you would like to get, I would just ask whether there may not be more efficient or direct ways to get it, such as asking the question of the individual himself rather than of me." 3 *Radiation Laboratory* (1950) 3428.

See also testimony of Frances P. Hawkins, *ibid.*, 3455-3456; Larry Parks, 1 *Motion Picture Industry* (1951) 87, 93-94; Lillian Hellman, 8 *Motion Picture Industry* (1952) 3545-3546.

[135] 4 *Investigation (Exec.)* 1582.

[136] The following questions, taken from the testimony of David K. Kamaker, are illustrative of this type of examination:

> "Will you state to the committee where you have worked in the past five or ten or fifteen years?"

(Footnote Continued on Page 83)

7. The committee's use of publicity, black lists and firings as weapons of the exposure system.

The exposure system which is the heart of the committee's functioning vitally depends upon the use of publicity. The committee uses publicity both to promote approval of its

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(Footnote Continued from Page 82)

"Have you ever been a member of the Communist Party?"

"Who approached you to ask you to join the Communist Party?"

"Tell us just how you became a member."

"Did you attend a meeting before the time you joined?"

"Did you join at that time?"

"Did you sign a party card?"

"Who gave it to you?"

"Did you pay dues?"

"To who did you pay the dues?"

"Can you tell the committee who were present at the meeting when you joined the party?"

"Did you buy or were you given any Communist literature while you were a member of the party?"

"Who gave it to you?"

"How many meetings did you attend?"

"Can you name any other persons you have not already named who attended those meetings when you were there?"

"After you dropped out of the party, were you ever asked to come back in the party again?"

"Who asked you?"

"Did you join again?"

"When you dropped out of the party, after being in it about five months, what did you do with your membership book?"

"What did you do with literature that had been given to you?" 1 *Hawaii* (1950) 1467-1469.

Another friendly witness was interrogated in the following manner:

When she was married and how and when her marriage terminated; whether she was or had been a member of the Communist Party; what led her to join; who actually recruited her; whether she paid dues and how much; who suggested that she make contributions; when did her husband join; whether she got a membership card, and what she did with it; the names of the Communist Party groups in Cincinnati; who were the members of her group; what were their occupations and where did they live; how to spell the names of these members; (at

(Footnote Continued on Page 84)

activities and to prejudice and intimidate the witness. Long ago the committee learned how to time hearings so as to create before the noon recess a good headline for the afternoon press and before the close of the session a new lead for next morning's newspapers. The committee is equally adept at other forms of publicity. It releases its hearings and reports at strategically selected times so as to "take the play away" from the witness.[137] Today committee hearings are carefully staged publicity performances with a full panoply of reporters, flood lights, television and newsreel cameras and radio recorders, de-

(Footnote Continued from Page 83)

this point the witness gave an extensive account of names, occupations, and personal data of those she described as members of the party) at whose house the witness picked up copies of the Communist newspaper that she distributed; who instructed her on selling the newspaper to Negroes; who were the Communists in the Political Action Committee; what were the occupations of these Communists; was she requested to purchase party literature; who sold it to her; what party meetings had she attended outside Cincinnati; who was there; whether a certain individual was affiliated with the Communists; (at this stage of the questioning, an exhibit was introduced by the committee into the record indicating that this person had been with the American Military Government in Korea; the committee then decided to investigate his appointment) what was the "UE unit"; who attended its meetings; who prepared certain leaflets sent out to the locals; who edited these leaflets; whether there was any attempt to infiltrate Communists into the armed forces; whether the question of revolution was discussed; whether she could identify a photograph of a certain person named as a Communist; who were the members of the fur and leather workers' cell; (the committee introduced into the record at this point the fact that one of the persons named by the witness "signed a statement opposing the anti-Communist bill" and that a second, together with his wife, signed Communist Party election petitions in Ohio in 1940). *Cincinnati Area* (1950) 2781-2796.

[137] For example, during the hearings involving Rev. Jack R. McMichael, the committee issued together with a press release, hearings involving another clergyman which were held two years earlier. *New York Times*, Aug. 1, 1953; 83d Cong., 1st Sess., *Testimony of Stephen H. Fritchman*, Sept. 12, 1951.

signed to ruin the individual in the public eye. The committee's hearings are a modern spectacle akin to the performances in the Roman Colosseum.[138]

The logic of its existence compels the committee to put on a show. It must startle, reveal, uncover, discover. It must accuse, charge, insinuate, incriminate, clear, vindicate. It must anticipate great revelations, promise blood-curdling spy stories, call mystery witnesses and hold surprise hearings. This is the stuff of which headlines are made and this is the way the committee makes headlines.

Committee activities have never lacked for good coverage and committee members, outside of hearings, are treated generously by the press. A reciprocal relationship exists between committee members and certain journalists, whereby the newspapermen pass leads to the committee in exchange for private leaks.[139] The effect of the press leakages is that many persons are attacked in the press long before they appear as witnesses.[140]

The committee also helps color public impression of testimony by announcing in advance of his appearance the

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[138] The use of the executive session to screen out undramatic matter (see *infra*), "confrontation" by paid informers, abuse and physical ejection of counsel all contribute toward the liveliness of the affair.

[139] Carr, *op. cit.*, 391-392.

[140] The synthetic manufacture of headlines by big talk of impending hearings that never materialize is a common committee practice. Carr lists such examples as the announcement of a mystery witness whose testimony "would crack wide open the whole Soviet spy case" where no such witness ever appeared to testify with such startling effect (*Op. cit.*, 395, and newspapers there cited; see also Carr, *op. cit.*, 174; 86 C. R. 13768). When Lawrence Duggan died from a fall from a window, the *New York Times* reported in a front page headline that he was "named with Hiss in Spy Ring Inquiry." *New York Times*, Dec. 21, 1948. This headline resulted from a press statement issued by Representative (now Senator) Mundt five hours after Duggan's death. Mundt and Representative (now Vice-President) Nixon made public testimony—later repudiated—that Duggan had been named by Chambers. *Ibid.*, Dec. 22, 1948.

subpoenaing of a witness, "identifying" him and intimating what he is expected to testify on,[141] and by announcing the committee's impression of what was said in executive session without making public the actual transcript.

The committee has a way of attacking a person without the formality of a hearing of any sort. This is accomplished by releasing to the press and public "unverified" information, charges and gossip from its "secret files." Such public releases enable the committee to escape responsibility for its attacks through formal disclaimer that they reflect the official view of the committee.[142]

The committee sometimes uses publicity quite crudely as a form of intimidation. In one instance, after being asked if he were a member of the Communist Party, and before answering, a witness requested the removal of the cameras. Representative Velde replied:

> "Well, now, may I ask the witness this: If I do order —or if the committee does order—the cameras turned off and the lights turned off, would the witness then answer the questions put to him by counsel?
>
> "Mr. Cohen. Well, I would feel more at ease.
>
> "Mr. Velde. Well, would you answer the question as to your membership in the Communist Party if the lights were turned off and the television and newsreel cameras ordered to desist? Would you then be willing to cooperate with the committee in that regard?" [143]

Although the committee professes to rely upon the processes of public opinion, it takes no chances. Its attack

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[141] E.g., preview of Lee Pressman's appearance in *New York Herald Tribune*, August 27, 1950.

[142] See "A Velde 'File' Dissected," *Washington Post*, April 5, 1953, and "Sherrill Protests Inquiry Procedure," *New York Times*, July 20, 1953.

[143] 2 *New York City Area* (1953) 1237, 1238. See also 3 *New York City Area*, 1343-1345. This incident is all the more remarkable in the face of the committee's professed policy to remove, if there is objection from the witness, lights, newsreel and television cameras.

on individuals does not end with mere exposure. The committee also seeks the dismissal of persons it considers "subversive" from public and private employment and union office. To this end, it cooperates with private industrial and pressure groups to draw up lists of subversive organizations and to single out individuals whose affiliations and beliefs should be the basis for loss of employment. This is one of its stated goals [144] and is perhaps most clearly shown in connection with its various Hollywood investigations.[145] The committee was responsible for the legislation depriving three government employees of their positions, later declared unconstitutional as a bill of attainder.[146] The committee boasts that its hearings on Louis Dolivet resulted in his loss of United Nations employment and removal as editor of United Nations World.[147]

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[144] 9 *Investigation* 5447; *New York Times*, Dec. 26, 1946; *Ibid.*, Jan. 23, 1947.

The committee has initiated investigations at the request of private groups and individuals. As it has stated:

> "The committee has formulated the policy of investigating complaints received from American citizens who have the interest of the United States foremost in their hearts and minds. In each instance the committee has undertaken an investigation only upon complaints by citizens." 79th Cong., 2d Sess., H. Rept. 2233.

When the committee demanded the radio scripts of selected news commentators, Representative Landis declared:

> "As a public agency we are compelled to respect a reasonable request from substantial citizens." 92 C. R. A3149 (1946).

The committee's request that American institutions of higher learning submit textbook lists was justified on the grounds that the investigation was requested by the National Council of the Sons of the American Revolution. Carr, *op. cit.*, 283.

[145] See *Motion Picture Industry* (1947) 49, 50, 52-53, 66, 393, 522.

[146] *United States* v. *Lovett*, 328 U. S. 303, 308, 309, 315.

[147] *Annual Report*, 1950, 4-5.

The committee's subpoenaing of Dr. Frank F. Oppenheimer resulted in the acceptance of his resignation by the University of Minnesota.[148]

The reasons why the committee goes to the lengths which we have described (*supra*, pp. 75-76) to identify names and addresses can be gathered from the following description of the consequences by a hostile witness:

> "I left the University of California Medical School to accept a position as chief radiologist at St. Joseph Hospital in Orange, Calif. I held that position for seven and one-half years, actually until September 22, 1951, when I was asked to resign because of a mention of my home on the previous day by you, Mr. Tavenner, when you examined one of the doctors during that period of the hearing.
>
> "After the mention of my home, I might say, two times, with you spelling my name, I received a telephone call the next day * * *.
>
> * * * * * * *
>
> "Dr. Pennes. That incident changed the course of my whole medical career, and I think I can take 30 seconds to mention it.
>
> "On September 21, while you were questioning a doctor, you asked him whether there was a certain type of meeting in my home, and you mentioned my name twice, and you spelled out my name to make sure that everybody got it, and the following day at 10 o'clock in the morning the superintendent of the hospital asked me to resign because of the associated publicity. This, mind you, after seven and one-half years of excellent service, admitted by the superintendent of the hospital."[149]

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[148] *The New York Times*, June 15, 1949. See also Anderson case in Barth, *The Loyalty of Free Men*, 70-71. Committees have achieved ultimate success in their drive to punish dissenters in several instances where a congressional investigation or a resulting black list contributed to the premature death of a committee witness. Such committee victims were John Garfield, Canada Lee, Tom O'Connor and Harry Dexter White.

[149] 4 *Los Angeles Professional Groups* (1952) 4116. The meeting referred to was "a meeting of the medical division of the Arts, Sciences and Professions." *Ibid.*, 4116-4117.

On the other hand, cooperation with the committee is rewarded. One witness was told by Mr. Velde:

> "We are out to determine, to ascertain facts relative to subversive activities in this country; and I believe—of course, I cannot speak for United Press—if you would furnish us the information that we are asking that probably your job would be a lot more safe than it is at the present time—" [150]

The committee uses its powers not only to instigate loss of employment and blacklisting, but, as we shall show (*infra*, pp. 120-121), to give "clearance" to, and thus to qualify for employment, those under a political cloud. If there is any constitutional connection between these functions of the committee and the power of inquiry, it has completely eluded us.

B. The committee as an instrumentality for attacking organizations.

1. The attack on political organizations.

The "subversive" organization is the vehicle through which the committee has increasingly expanded its jurisdiction and activity. The committee regards certain organizations and movements as "subversive" because of their alleged domination by the Communist Party, because they entertain particular objectives which Communists also entertain, because they had never been aggressively anti-Communist, because their officers, sponsors or mem-

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[150] 3 *Infiltration—Education* (1953) 997. See also 1 *Motion Picture Industry* (1951) 110: "Don't you think that that question [end of witness' acting career because of committee subpoena] might be influenced to some extent by the fullness of the cooperation that you give to the committee * * *?"

In the recently conducted committee hearings in San Francisco, several of the witnesses complained that the fact that they had been subpoenaed had resulted in loss of their jobs. When these witnesses pleaded the privilege against self-incrimination, committee members promised aid in obtaining their reinstatement if the witnesses answered their questions. *New York Times*, Dec. 9, 1953.

bers have been "exposed" by the committee as "subversive," [151] or because some other committee or officer of government has "listed" [152] them as "subversive" organizations. The committee has devised an elaborate terminology of organizational consanguinity to the Communist parent stock. These terms include "Communist-dominated," "Communist front," "Communist satellite," "Communist transmission belt," "arm of the Communist Party," "formed to advance Communist aims." Thus the mere fact that the individual is not a Communist Party member does not spare him from harassment or exposure.[153]

Just as the committee substituted for an investigation of propaganda the exposure of individuals as its principal activity, so it has largely ignored the propaganda of organizations and has dealt with the organizations as such. This phase of the committee's activity has enlarged its jurisdiction so as to make it a governmental censor of a wide variety of private associations. The committee attacks organizations in four inter-related ways. First, some of its reports deal exclusively with organizations; for example, in 1944 it issued a report on the CIO Political Action Committee (78th Cong., 2d Sess., H. Rept. 1311); in 1947 it issued reports, among others, on the Southern Conference for Human Welfare (80th Cong., 1st Sess., H. Rept. 592) and on the Civil Rights Congress (80th Cong., 1st Sess., H. Rept. 1115); in 1949, it issued a "Review of the Scientific and Cultural Conference for World Peace;" in 1950, the organizations reported on included the National Lawyers Guild, the National Committee to Defeat the Mundt Bill, and the *Honolulu Record;* and in 1952, it issued, among other attacks on organizations, a "Review of the Methodist Federation for Social Action."

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[151] This exposure in turn frequently rests upon the individual's relationship to other organizations deemed by the committee to be "subversive."

[152] The counterpart in the organizational field to "exposure."

[153] For a recent example, see the hearing of Bishop Oxnam, *supra.*

Second, in the course of its hearings the committee pursues a technique of questioning the witness concerning his relationship with particular organizations. It then puts into the record its own charges concerning the organization and its "subversive" nature.

Third, in its annual reports, the committee singles out particular organizations or causes and denounces them as subversive.

Fourth, as a separate project, the committee has its own listing of organizations. This *Burke's Peerage* of organizational "subversion" is not a report on legislation or a legislative subject matter. It is not a report to Congress at all. The latest revised edition is *Guide to Subversive Organizations and Publications*, 82d Cong., 1st Sess., H. Doc. 137. This compendium lists in alphabetical order some 639 organizations and 204 publications and identifies the government agencies which have cited them adversely.[154] A striking characteristic of the list is the fact that many of the citations turn out to be by the committee itself, supplemented by state committees of the same character.[155] Among the organizations cited are Almanac Singers; Allied Voters against Coudert (a New York organization cited "as a Communist front" by the California Committee on Un-American Activities); American Committee for Anti-Nazi Literature (cited by California committee); American Committee of Liberals for the Freedom of Mooney and Billings; American Council, Institute of Pacific Relations (in response to this organization's request for the deletion of its name, the committee states that the characterization "will continue pending the result of

[154] Early editions of this work also drew upon private sources, see *Citations by Official Government or State or Municipal Agencies or Reliable Private Organizations Regarding the Character of the Organization Named*, 1946.

[155] The organizations thus condemned receive no hearing. *Cf. Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123.

* * * investigations" by the California committee and a United States Senate committee); American Friends of Spanish Democracy; American Investors Union, Inc. (of "Communist complexion"); American Labor Party; American Round Table on India; American Relief Ship for Spain (cited by the committee itself as having "raised funds for the Communist end of that civil war"); Associated Magazine Contributors; Book Find Club; Citizens Committee to Aid Locked-out Hearst Employees; Committee for Civil Rights for Communists; Committee for Peaceful Alternatives to the Atlantic Pact; Committee to Defend Angelo Herndon; Connecticut State Youth Conference; Federated Press; Freedom from Fear Committee; Illinois People's Conference for Legislative Action; International Congress of Women; Jewish Black Book Committee of Los Angeles; League Against Yellow Journalism; League for Protection of Minority Rights; League of Women Shoppers; Methodist Federation for Social Service (cited by the California committee as having admitted "cooperation with * * * the Communists"); National Committee to Aid the Victims of German Fascism; National Committee to Defeat the Mundt Bill (cited from the committee's report on the organization, *supra*, as a group "which has carried out the objectives of the Communist Party in its fight against anti-subversive legislation"); National Lawyers Guild; National People's Committee Against Hearst; Milk Consumers Protective Committee; Joint Committee of Trade Unions on Social Work; Non-Partisan Committee for the Re-election of Vito Marcantonio; Progressive Citizens of America; Scottsboro Defense Committee; Sleepy Lagoon Defense Committee; Southern Conference for Human Welfare (cited by the committee because it "received money from the Robert Marshall Foundation, one of the principal sources of funds by which many Communist fronts operate"); Sweethearts of Servicemen (cited by the committee because "its maiden effort was a delegation of seventy-five young women who arrived in Washington to

petition Congress 'to give their soldier boy friends and husbands the chance to vote in the 1944 Presidential elections'"); Teen-age Art Club; Washington (D. C.) CIO Committee to Reinstate Helen Miller; and Young People's Records. Among the publications listed as subversive are: *Allied Labor News Service, California Eagle, Chicago Star, China Aid News, Friday, Guild Lawyer, Honolulu Record, IJA Monthly Bulletin, In Fact, Labor Herald* (of the California CIO); *Lawyers Guild Review; Reader's Scope.*

The committee condemns organizations by relating their goals to its version of what is communistic. To this test of guilt by parallelism or mutual object the committee adds guilt by association. This is necessary if the membership of the organization is to be exposed.[156] When the chain of

[156] The standards employed by the committee in thus condemning organizations are analyzed in Gellhorn, *Report on a Report of the House Committee on un-American Activities,* 60 Harvard L. R. 1193. This article establishes the tendentious standards relied on to support the judgment of organizational "subversion." It concludes that the accusations against the Southern Conference were "not founded on credible evidence. From semi-truths the committee has drawn conclusions which would be strained even if the factual assertions of the report were beyond challenge. The report demonstrates, not that the Southern Conference is a corrupt organization, but that the committee has been either intolerably incompetent or designedly intent upon publicizing misinformation."

As Professor Robert E. Cushman has put it:

> "Under the guise of attacking communism he [Mr. Dies] was able to attack all so-called liberal ideas in the field of politics and economics. This was done by pinning the label of communism on all persons who belonged to any society or organization in which there ever had been any Communist member, or any idea, theory, or action of which any Communist had ever approved." Cushman, "Civil Liberty and Public Opinion," in *Safeguarding Civil Liberty Today. The Edward L. Bernays Lectures of 1944 given at Cornell University* (1945), 100, 101.

Professor Cushman pointed out that he and Professor Carl L. Becker had been placed on the committee's "subversive" list because they had been among the thousands of signers of a petition to President Roosevelt urging recognition of the Soviet Union, an action which, of course, the President subsequently took, despite the fact that it was also urged by the Communist Party.

proof is strained, the committee reminds the unconvinced that the absence of proof in itself condemns the organization as a Communist front. "Being part of a conspiratorial movement, their essence is deception." *Guide*, 3.

The committee invariably regards as a fit target for exposure an individual who joined or belongs to an organization considered by it to be subversive, even if he denies membership in the Communist Party. In the same way, the failure to abandon an organization with the proper degree of promptness or publicity after it becomes suspect is evidence of subversion. Under the committee's standards, the very least which may be charged against such an individual is that he is a "dupe." [157] If he is unwilling publicly to confess that he was a "dupe" and if he is identified with other organizations disapproved of by the committee, then he must be regarded as a secret Communist Party member.[158]

Coupled with the use of all forms of derived guilt is another hallmark of the committee's functioning—the removal of political expression from its relevant context. The passage of time plays no part in the committee's exposure operation. The fact that the witness may have belonged to organizations disapproved by the committee as long ago as twenty years, is sufficient justification for subpoenaing and exposing him. The fact that political

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[157] The committee regards as least reprehensible in the order of offenders "Those who have been attracted by the high-sounding aims of the front organization or organizations, by the prominence of its sponsors, or by a desire to be sociable." However, it must not be assumed that even such individuals can escape the committee's criticism. "The judgment of such persons is certainly open to criticism just as much as if they aided in launching any other hoax." *Guide*, 5.

[158] "This category may be recognized by the regularity with which it follows the line of the Communist Party, throughout all its variations, by the number of different front affiliations, by the posts they occupy in these front organizations, and by the fact that they retain their affiliation after the organization has been publicly exposed." *Ibid.*

expression is almost always a response to a particular political situation and that it changes with the passage of time does not prevent the individual's exposure.

As the supply of exposable Communist Party members dries up, the committee shifts the center of the "Communist plot" and broadens its scope by ever more remote chains of association to include thousands of Americans who resort to concerted group activity to curb the evils of the world they live in. The committee has already stultified the exercise of this right and made a badge of social acceptability an individual's boast that he is not a "joiner." And it must be noted that this constitutionally protected right has fallen victim not to a legislative purpose but to "exposure." Indeed, the attack on organizations involves a double exposure: the organization is exposed ("listed") so that the individuals belonging to it may be exposed.

2. The committee's attack on labor unions and their activities.

A key form of association in American life which has been a target of the committee is the labor union. As we have pointed out, the investigation of the Union by the committee was, when it was initiated, marked by an attempt to intervene in a local, internal union election. From the very beginning, the committee has so timed its activities in labor matters as to ally the force of government either with the employer or with a particular union faction.

In 1941, Representative Dies fought the striking Transport Workers Union of New York with the release of a committee report charging that Communist leadership prevented settlement of the strike.[159] When an aircraft strike was declared in California, Dies spoke in Congress against its leader.[160] He charged Communist domination

[159] *Investigation*, Appendix V, Transport Workers Union (1941).

[160] 87 C. R. 2355 (1941).

of the CIO Steelworkers Organizing Committee when he learned it was considering a strike.[161] The late CIO President Philip Murray, in a communication to the committee on March 27, 1941, said:

> "It seems strangely significant that your groundless charges against C. I. O. always come at a time when they can do the most harm. Obviously you are aware of the negotiations now being conducted with the United States Steel Corporation and the coal operators. I also recall your moving into Chicago last year at exactly the same time that a C. I. O. union was engaged in a Labor Board election at the Armour & Co. Plants." [162]

When an aluminum industry strike for a wage increase occurred in Cleveland in 1941, the committee subpoenaed the regional director of the union, who was in Washington to appear before a mediation board, and charged him with Communist affiliations.[163]

In the 1947 investigation into communism in labor unions, the committee launched an inquiry into a union which conducted a major strike against the R. J. Reynolds Company of North Carolina.[164] The reason for the investigation was thus stated by a committee member:

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[161] *Ibid.*, A1352-53.

[162] *Ibid.*, A1509. The incident referred to by Mr. Murray occurred when the committee visited Chicago, four days before an election in the Armour plant set for November 21, 1939. According to the *Chicago Times* of November 17, 1939, "Van A. Bittner, chairman of the Packinghouse Workers Organizing Committee, charged the Dies inquiry is an attempt to influence the election * * *." On November 20, 1939, the *Chicago Times* reported, "a resolution accusing Representative Martin Dies of trying to break up the CIO Farm Equipment Workers Organizing Committee, Local 101, was adopted today by 600 stewards and union members. The union is about to negotiate for a wage increase at the IHC tractor works."

[163] 14 *Investigation* 8597-8643.

[164] *Labor Unions* (1947) 117.

"Mr. Bonner. * * * a representative from that locality came up and asked for assistance." [165]

In 1939, a witness subpoenaed on the eve of an inter-union election observed:

"I take no position in connection with the impending election, but insofar as the election is to be next Tuesday, and in as far as the leaders of the union on the C. I. O. side have been subpoenaed to come before you and the leaders of the union on the Federation of Labor side have not been subpoenaed to come before you, it seems to me unfair prejudice in favor of the Federation of Labor." [166]

When the committee investigated in Massachusetts, it was alleged:

"* * * this committee was the most potent weapon our opponents had in our most recent elections, the one they used the most. They [the committee] subpoenaed other witnesses that were mentioned * * * on July 20. * * * They waited until 36 hours before a very important election at GE to subpoena me. The opposing union knew all about it and announced it to their members and told them to keep it quiet until the subpoena was served at 4 o'clock. It was served promptly at 4 o'clock, which they knew it would be.

"They dashed into the streets with an already prepared printed leaflet telling how the government had grabbed Tormey, hoping to take the election with that little trick." [167]

On August 3, 1949, just prior to the election of delegates to UE's convention, the committee subpoenaed the officers of UE Westinghouse Local 601, Pittsburgh. Hearings were held in Washington beginning August 9th, and local

[165] *Ibid.*, 120. The committee has been criticized in Congress for its interference in strikes. 84 C. R. 443 (1939).

[166] 1 *Investigation (Exec.)* 301.

[167] *Massachusetts* (1951) 1384. For a review of early anti-labor activities, see Thomas, *op. cit.*, 6, 7, 9.

leaders Fitzpatrick, Panzino, Quinn and Whisner appeared. Mr. Fitzpatrick stated: "* * * I would like to make this brief statement. We are in the midst of an election in 601 and us four fellows subpoenaed for today are candidates in that election." [168]

On June 15, 1950, during an election campaign at the Sylvania Company's plants in Mill Hall, Emporium and Warren, Pa., four UE organizers active in that campaign were subpoenaed by the committee to appear on July 10th in Washington. As a result, on June 20, 1950, one day before the election at these plants, the *Cameron County Press* issued a special edition, the first time in the history of the paper, established in 1866. The banner headline read: "U. S. GOVERNMENT SUBPOENAS BEN RISKIN." [169] On July 10th the four subpoenaed witnesses went to Washingington, but they were not called until they themselves protested. Thereupon two of the witnesses were called for a cursory hearing.[170] The subpoenas for the other two, one of whom was Mr. Riskin, lapsed at the close of that session of Congress and they were never called.

The significance of the committee's activities is demonstrated in the *Daily Evening Item* of Lynn, Mass., of August 15, 1951. On its first page the newspaper proclaimed, "16,000 TO BALLOT IN GE POLL," and on the same page it ran the headline, "U. S. CALLS UE ORGANIZER TO CAPITAL GRILL," below which appeared: "Almost on the eve of the collective bargaining election tomorrow at the River Works and Everett plants of the General Electric Company, a United States marshal served a subpoena on Don Tormey, of Beverly, an organizer for the United Electrical Workers, Independent, to appear before the House Un-American Activities Committee." Mr. Tormey was not

[168] 1 *Infiltration—Labor Unions* (1949) 601.

[169] The union representative at the Sylvania plants.

[170] 3 *Infiltration—Labor Unions* (1950).

called before the committee, however, until October 11, 1951.[171]

On October 13, 1952, the Union was investigated again, this time in Philadelphia. Announcement was made in the press (*The Philadelphia Inquirer*) of the coming of the committee on June 29, 1952, just three days before a National Labor Relations Board election at the Eby Company on July 2, 1952. The subpoenaed individual, business agent of the UE local, was in charge of the election campaign. Curiously enough, he was not called to testify in Philadelphia until October 13, 1952.[172]

Congressman Wood, when chairman of the committee, acknowledged that he was not indifferent to the impact of its activities upon union elections:

> "Now, if by any act of mine—and I speak for myself only, as chairman of this committee, but individually—if by any act of mine I have been able to bring before this committee officials of an organization who cloak themselves with the Fifth Amendment to refuse to answer as to whether they are members of an organization that is conspiring to overthrow this government, and if by doing that I have caused them to lose a labor union election in this country, I would be very happy about it myself." [173]

When UE negotiations with the International Harvester Company were in progress in Chicago, the committee subpoenaed the chairman and members of the UE negotiating team. The company seized the opportunity to publish a letter announcing the investigation even before the subpoenas were issued.[174] When a request was made at the same hearing that testimony by other members of the negotiating team be postponed until the end of the strike, the committee, despite its "previous policy * * * that we will not retain here those witnesses who are actually en-

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[171] *Massachusetts* (1951) 1371.

[172] *Philadelphia Area* (1952) 4329.

[173] *Massachusetts* (1951) 1386.

[174] 1 *Chicago Area* (1952) 3704.

gaged in this negotiation work," called the witnesses nevertheless. "But, since they are here, counsel does desire, I believe, to ask them one question." The negotiating team was called, "all three at the same time," sworn in together and asked en masse the question that could not be postponed until after the negotiations, "* * * are you now or have you ever been a member of the Communist Party?" [175]

The committee strives to give a "security" coloration to its attacks on unions. See *infra*, p. 166. A particularly transparent use of the "security" gambit is seen in the following testimony which a "friendly" witness was cued to give concerning the United Office and Professional Workers Union:

> "Mr. Tavenner. Mr. Philbrick, can you give the committee any further information that might be pertinent to the infiltration of communism into the defense areas, particularly into basic industries, particularly into the fields of finance and communications?
>
> "Mr. Philbrick. I don't believe we included that this John Hancock organizing campaign was successful for the party, and that they were able to set up the UOPWA union at the John Hancock Insurance Co. at that time." [176]

But not even a pretense that it was pursuing a federal subject matter disguised the committee's recent intervention in the Hearn's department store strike. The committee subpoenaed the leaders of the Distributive, Processing and Office Workers of America, CIO, while that union was engaged in a long and serious strike with Hearn's department store, and both sides were making urgent pleas for public support. A formal request by the union officers that "these hearings be adjourned until the Hearns strike is closed" was rejected by the committee.[177] In the course

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[175] *Ibid.*, 3718-3719.

[176] *Massachusetts* (1951) 1299.

[177] 5 *New York City Area* (1953) 1990-1991.

of the hearings one of the witnesses, a district vice-president assigned to department stores, who had negotiated with management prior to that time, stated to the committee: "We are in the midst of an eight-week strike at Hearns, and I was threatened that a committee would be brought in, and here it is * * *." [178]

C. The committee's procedure—a weapon in the exposure system.

Since the committee is not concerned with developing information concerning a particular subject matter but rather with conducting ideological warfare through the use of the exposure system, its procedures are devised so as to afford it the greatest opportunity for pursuing, attacking and punishing the witnesses whose political views and affiliations are distasteful to it. The procedural consequences of the committee's function are its Janus-faced standards depending upon whether the witness is friendly or hostile.

1. The committee's double procedural standards.

Hostile and friendly witnesses are accorded distinctly different treatment. The friendly witness is greeted with warmth and respect. He is allowed and encouraged to testify at length and the committee is gratified to hear his opinion on any subject. He is aided and inspired to make charges and cast suspicion on others.[179] His answers to questions may be rambling, irrelevant or stupid—but they are welcome and lavishly praised. And no wonder, for he shares the committee's premises, supports its charges, confirms its suspicions and provides it with more names to be exposed.

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[178] *Ibid.*, 1987.

[179] E.g., "Do you know, as a matter of fact, that Rabbi Frahm does not have communistic tendencies?" 3 *Investigation* 2230.

The hostile witness, on the other hand, is stringently limited in his answers to the precise information sought by the interrogator and may not volunteer or elaborate any answers. He is often compelled to give a "yes" or "no" answer to difficult questions. The committee treats him with coldness and hostility, and frequently tries to entrap him. That he should be so treated is not surprising since he is summoned primarily to confess under oath that he is a "subversive," so that his exposure may be complete.

The double standard maintained by the committee was implicitly recognized in one of its reports:

> "In dealing with groups and individuals that engage in this subversive conspiracy, the committee has the difficult task of pursuing its inquiry through regulations and procedures which, when formulated, were meant to apply only to law-abiding citizens of the country." [180]

And in a recent statement:

> "This committee has no desire to persecute anyone, certainly not those who see fit to cooperate with the committee * * *." [181]

Thus, the hostile witness is hurried, but the committee does not tire of friendly witnesses. In reply to a question,

> "Did the severance of your connection with the party occur suddenly or was it a type of action that took some time to develop?"

the witness answered with two full printed pages of rambling discourse, including a recommended reading list for Communist Party members seeking a way out of the Party, and descriptions of the disillusionment of other ex-Communists. The committee showed no reluctance at all to listen to the lengthy and generally irrelevant testimony.[182]

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[180] *Interim Report on Espionage* (1948) 2.

[181] 3 *Los Angeles Professional Groups* (1952) 4089.

[182] 4 *Motion Picture Industry* (1951) 1441-1442. See also *ibid.*, 1444-1445.

The committee's insistence on yes or no answers is peculiarly limited to hostile witnesses, and includes situations where such answers are impossible. One witness, for example, was asked a question which described in detail the manner in which the witness was fired from a job, and then asked:

> "Now, is that not exactly what happened?
>
> * * * * * *
>
> Dr. Pennes: Mr. Walter, I would like to answer that.
> Mr. Walter: You can answer it 'yes' or 'no.'
> Dr. Pennes: I will tell you what happened.
> Mr. Walter: Just answer whether that happened.
> Dr. Pennes: That is not what happened, and what happened was that she said——
> Mr. Walter: You have already told us, and I am asking you, and you said, 'No, that did not happen.'
> Dr. Pennes: That is not what happened."

No further testimony was allowed on that question.[183]

For a friendly witness, however, there are no such limitations. One witness, replying to a question, stated that he would have "to make an observation" in order to clarify his answer. He was told, "I want you to, whatever your observation is." [184] But a hostile witness who sought to make an observation was curtly cut off.[185]

Hostile witnesses are continually interrupted in their testimony.[186] But the friendly witnesses are invited to fill the record with their observations. One witness, for example, was asked, "Do you have anything further you desire to say with regard to the circumstances under which you

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[183] 4 *Los Angeles Professional Groups* (1952) 4123. See also *ibid.*, 4128.

[184] 4 *Motion Picture Industry* (1951) 1453.

[185] *McMichael* (1953) 80, 244.

[186] 4 *Los Angeles Professional Groups* (1952) 4116-4117.

severed your connections with the Communist Party, or have you explained that as fully as you desire?" [187]

The friendly witness is assisted in his testimony by a series of leading questions to guarantee that the information the committee desires will be entered in the record. The witness cooperates merely by assenting to the correctness of the question. One witness "testified" as follows:

> "Mr. Tavenner: Well, by suspicion do you mean the rank and file members of the union would have objected to the use of its facilities for holding of Communist Party meetings, if they had known the true purpose?
> Mr. Lundgren: That is correct.
> Mr. Tavenner: Then does that mean that the members of the Communist Party endeavored to conceal their Communist Party membership from the rank and file of the union which they were attempting to lead?
> Mr. Lundgren: Absolutely; yes.
> Mr. Tavenner: And because of the danger of exposing the Communist influence that was being brought to bear upon the union, you decided not to hold any further meetings in the union hall?
> Mr. Lundgren: That is right." [188]

The leading question is used towards a hostile witness, however, in the same manner in which it is used at a trial on cross-examination. One witness, for example, after the committee had named a certain individual as a "subversive," was asked:

> "Mr. Kunzig: You know he is a good friend of yours; is that right?
> Bishop Oxnam: Just a minute. Don't put answers in my mouth, please.
> Mr. Kunzig: Just answer the question." [189]

Affirmative evidence offered by witnesses unfriendly to the committee is not welcome. One witness, for example,

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[187] 4 *Motion Picture Industry* (1951) 1443.

[188] 1 *Chicago Area* (1952) 3628.

[189] *G. Bromley Oxnam* (1953) 123.

sought to testify that the accusing witness had committed perjury, and was met with this response:

> "Mr. Tormey: What he [Philbrick] testified here was in contradiction to what he testified at Foley Square.
>
> Mr. Wood: That was not the question that was asked you.
>
> * * * * * *
>
> Mr. Forer [attorney]: * * * the witness has been trying to give a comment on the testimony that was given by Mr. Philbrick, a factual comment * * *.
>
> Mr. Tavenner: I haven't asked him any question to which that would be responsive.
>
> Mr. Forer: I think that is something which the committee should be interested in. * * * It is a question of evidence and of Philbrick's having committed perjury before this committee, and I think the committee should want to hear that.
>
> Mr. Tavenner: If it is a matter of record, as you indicate, the committee certainly would have possession of it." [190]

While the committee is pleased to hear the opinions of witnesses who will praise its work, it is not interested in the opinions of even the cooperative witnesses, if such opinions are critical. Thus, Bishop Oxnam at one point was told by Congressman Walter:

> "Now, let's not criticize the committee * * * every time you are asked a question." [191]

Friendly witnesses present their stories to the committee as fulsomely as they desire, but hostile witnesses are not allowed as of right to read a statement before the committee.[192] The committee will sometimes add a written state-

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[190] *Massachusetts* (1951) 1381.

[191] *G. Bromley Oxnam* (1953) 116.

[192] 1 *Motion Picture Industry* (1951) 112-114; *Gerhart Eisler* (1947) 2.

ment to the record, but without permitting it to be read. It has even withdrawn previously granted permission to read a statement at the end of "uncooperative" testimony.[193]

Since the friendly witness has no occasion to appeal for procedural protection, the insistence upon procedural rights is itself deemed to be suspicious. Witnesses are thus admonished that the exercise of their legal rights in the same way as Communists warrants the conclusion that the witness is a Communist also. In one instance, after a witness invoked the Fifth Amendment, but confounded the committee by appearing not to be a Communist, he was advised:

> "* * * that is literally a fact, that the known Communists answer just like you have answered, when it comes to the border line of any Communist activities. In other words, when the men that we know would use force of one kind or another to change our form of government answer these questions, they answer just like you have."[194]

2. Right to counsel.

Each witness is theoretically permitted to appear accompanied by counsel and to consult with counsel on his constitutional rights before answering questions. The committee characteristically distorts this right into a weapon against the witness.[195]

Generally, friendly witnesses appear without counsel and hostile witnesses with counsel. Thus, the witness accompanied by counsel is immediately suspect. When Eric Johnston appeared before the committee, the following colloquy occurred:

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[193] 2 *District of Columbia Area* (1950) 3269.

[194] 3 *Motion Picture Industry* (1951) 708.

[195] Counsel for Bishop Oxnam called representation at these hearings a "fraud on the public" because he had been warned that if he spoke he would be ejected. *New York Times*, Nov. 23, 1953.

"Mr. Stripling: Mr. Johnston, are you represented by counsel?

Mr. Johnston: I am.

Mr. Stripling: Do you desire counsel?

Mr. Johnston: Mr. McNutt has been hired by the Motion Picture Association. He is here with me.

Mr. Stripling: As a witness, do you desire counsel?

Mr. Johnston: As a witness, I do not need counsel.

Mr. Stripling: For what purpose will Mr. McNutt serve?

Mr. Johnston: Mr. McNutt represents the association. I think it is wise for him to stay here with me.

Mr. Stripling: You are the witness.

Mr. Johnston: That is right.

Mr. Stripling: And you don't desire counsel yourself?

Mr. Johnston: No.

The Chairman: Well, if he would feel any better by having Mr. McNutt next to him, why, it will be all right for Mr. McNutt to sit next to him." [196]

But the witness who testifies without counsel is praised. When Lauchlin Currie appeared, Congressman Mundt told the committee:

"* * * I would like to have the record show that Mr. Currie, in addition to having answered questions in a forthright manner, came here without benefit of counsel to whisper in his ear the answers he should give to the committee. I think that is very commendable." [197]

The committee seeks to curtail consultation with attorneys by having each conference noted in the record.[198] Since these notations do not contribute to the committee's store of information, the only reason for them must be to cast suspicion on any answer given after such consultations.

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[196] *Motion Picture Industry* (1947) 304-305. See also *McMichael* (1953) 5.

[197] *Espionage in Government* (1948) 875.

[198] See, e.g., 4 *Infiltration—Education* (1953) 1110 ff.; 3 *Baltimore Area* (1951) 1004.

Where a witness freely avails himself of the advice of counsel, the committee has complained.

> "The Chairman: Now, the record will show that the witness, after almost every question, has referred to his counsel, and I say to both the witness and to counsel that we have got a great many questions to ask. We will expect answers, and the witness can answer of his own free will and accord. He doesn't have to get advice on every single question." [199]

Testimony given after consultation seems, in the committee's view, to lack the probative value of testimony given without such consultation. A witness answering after being advised is open to the charge that the answer is his lawyer's, and not his.

> "I noticed you did not answer that question until you first had consulted with counsel.
>
> "Now, I am asking you, is your answer that you just gave the result of your conference with counsel, which you have the right to have, or is it your own independent opinion * * *?" [200]

A committee which pries into the personal, ideological and organizational details of every witness' life does not hesitate to inquire as to the nature of attorney-client conferences. One witness was asked: "What did your counsel advise you?" "I want to find out whether your lawyer told you that the chairman's question was pertinent or not pertinent." "Did your lawyer tell you that the question was pertinent or not pertinent?" [201]

The right to counsel is further limited by the committee's refusal to permit its exercise on certain occasions. One witness, after asking, "May I consult with counsel?", was

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[199] *Excerpts from Atom Bomb Hearings* (1948) 3-4.

[200] 1 *Baltimore Area* (1951) 802; *Joint Anti-Fascist Refugee Committee* (1946) 40-41.

[201] *Joint Anti-Fascist Refugee Committee* (1946) 22-23.

told, "Not on this question," [202] and, "You know the answer to that question, don't you?" [203] Another witness, making the same request, was answered, "You don't need to, I am not going to ask you any legal questions." [204]

The committee has further attacked the right to counsel by directly intimidating counsel during hearings. In the first Hollywood hearings, the committee interrupted the questioning of a witness to call his lawyer to the stand and questioned him under oath concerning a newspaper article on the way he was advising clients. When the attorney pleaded the attorney-client relationship, the committee threateningly read him the federal conspiracy act.[205]

On another occasion an attorney was called to testify in the midst of his client's testimony. Upon his refusal to be sworn, the committee subpoened him, and asked if he were a Communist and whether he had been put in contact with his client through the Communist Party.[206]

The committee itself gratuitously advises witnesses as to their legal rights before it. After invoking the Fifth Amendment to a committee question, one witness was told by Congressman Walter:

> "Let me give you some worth while legal advice. You couldn't possibly be prosecuted for answering that question." [207]

If counsel consults with his client, he runs the risk of being charged with "coaching the witness." Nor may he

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[202] *Ibid.*, 9.

[203] *Ibid.*, 10-11.

[204] *Ibid.*, 40.

[205] *Motion Picture Industry* (1947) 367 ff.

[206] *Espionage in Government* (1948) 1215-1216, 1342-1346. See also, *Hanns Eisler* (1947) 158; *Labor Unions* (1947) 109, 122-123.

[207] 2 *Chicago Area* (1952) 3817.

reply to such charge since the committee rules forbid him to address it.[208]

3. The right of the witness to defend himself.

The witness is not advised in advance of his appearance of the charges that have been made against him or the reason why his presence is required. Thus, at one hearing, the witness was faced with testimony given in executive session, not made public, and not available for examination to him or his counsel.[209] Another witness complained to the committee:

> "When subpoenaed I immediately wrote * * * requesting that you forward me a transcript of Mr. Judson's testimony and the testimony of any other witnesses before the committee who might have made allegations about me.
>
> "Not until yesterday did I receive a reply * * * it did not contain a transcript of Mr. Judson's testimony, but merely a few sentences excerpted from it. I was unable then to learn and still don't know * * * what Mr. Judson said that might affect me * * *.
>
> "Moreover, when I requested a postponement of this hearing it was denied me * * * on the ground that I was being called as a witness on a specific day to confront another witness who would also name me.
>
> "I asked then who this witness was so that I might have some notice of the nature and character of the accuser and the accusation and have a chance to refresh my recollection about what association I might have had with this person, if I had had any * * *.

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[208] See *McMichael* (1953) 257-261 and Rule X of the committee's rules.

[209] 4 *Los Angeles Professional Groups* (1952) 4121. The committee rules (Rule X) provide for notice to a person named only (a) where practicable, (b) the hearing was public [this apparently enables the committee to hear charges in private session and leak them to the press without notice to the individual affected, see, e.g., *McMichael* 80-83], and (c) the individual was not previously named.

"Such notice was again denied me * * *." [210]

The witness may not cross-examine his accusers,[211] even though the committee will interrupt his testimony in order to place them on the stand and make their accusations directly.[212] While the committee does offer the "accused" a right to come before it and "clear" himself when the individual is ready to confess, it is far more reluctant to do so where the purpose is refutation. Thus, when Heywood Broun appeared to defend himself, the committee allowed him a few minutes to read a prepared statement and then hustled him off the stand.[213] Two unions, attacked before the committee, were denied an opportunity to clear themselves before it.[214] Dr. Edward U. Condon had to wait out a prolonged smear before the committee finally deigned to allow his appearance.[215]

When Bishop Oxnam appeared before the committee, another individual was named as a communist. Bishop Oxnam protested:

> "* * * Did he have any opportunity to answer that? * * * did he have a chance to answer what was alleged? * * *."
>
> "This is given to the public all over the nation before the man accused has had so much as an opportunity to answer."

The committee replied:

> "On the basis of the testimony we had in New York * * * how could any reasonable person come to any

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[210] 2 *Los Angeles Professional Groups* (1952) 3569. The same accusation was made by Charles Parlin, counsel for Bishop Oxnam. *New York Times*, Nov. 23, 1953.

[211] *McMichael* (1953) 102-103, 248-249.

[212] *Ibid.*, 337-376.

[213] 1 *Investigation* 938.

[214] 86 C. R. 601 (1940).

[215] Carr, *op. cit.*, 131-153.

other conclusion than that [these men] are dangerous Communists?" [216]

The committee's suppression of the right of the witness to defend himself is one of the oustanding procedural consequences of the exposure system.[217]

4. The role of the executive session in the exposure system.

Witnesses testifying at public hearings before the committee do not meet the committee for the first time. The

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[216] *G. Bromley Oxnam* (1953) 134.

[217] It can hardly be said that there are peculiarities of the congressional investigative function which require these procedural abuses. The hearing conducted pursuant to S. Res. 266, 74th Cong., 2d Sess., by a subcommittee of the Senate Committee on Education and Labor (Lafollette Committee), were highly controversial; nevertheless the committee respected the procedural rights and privacy interests of its witnesses. Thus, the committee asked the Pinkerton Agency to produce the names of its agents. Counsel for the agents objected on the ground that this information was not pertinent to the inquiry and that the request constituted an unconstitutional search and seizure in violation of the Fourth Amendment. The request was dropped. *Hearings*, 1446, 1733, 1760.

The committee took the position that counsel for any witness would be allowed to state any objections for the record. *Hearings*, 9075. Thereafter, counsel for the Ohio Rubber Company participated freely in the hearings, objecting to questions put to his client and to other witnesses, and putting questions of his own to the witnesses. *Hearings*, 9090-9091, 9100, 9104, 9117, 9125, 9144, 9150, 9162, 9174, 9177, 9186, 9198, 9199, 9208, 9219, 9225, 9239, 9242, 9244-9245, 9433, 9443-9444, 9449, 9450. So did counsel for Republic Steel Corporation, *Hearings*, 9993, 10077, 10160, 10430-10432, 10884, 10892, 10924, 11039, 13373-13375, as well as counsel for Balfour, Guthrie & Co., Ltd., *Hearings*, 17323, 17325-17326, 17330-17331.

Consistently throughout the hearing the committee followed the practice of allowing adverse witnesses to hear or read one another's testimony and then to appear in reply to it. A typical example appears at *Hearings*, 10953-11068. On one occasion counsel for Republic Steel Corporation protested that the committee had not called witnesses who would testify to the company's version of the facts. He supplied the names of such witnesses to the committee. Committee investigators then went to these witnesses, in the presence of counsel for the company, and took affidavits from them which were entered in the record of the hearings. *Hearings*, 10077, 10299-10300. See also Ogden, *op. cit.*, 102.

public hearing is often preceded by an executive hearing.[218] Similar questions are put to the witness.[219] A transcript is made. The only difference between the two hearings is the exclusion of the public from the executive hearing.

While it has become a practice to hear witnesses in executive session before holding the open session, the committee occasionally interrupts an open session to "go into executive session", and vice versa.

The routine executive session serves many purposes. It rehearses friendly witnesses. It tells the committee what questions hostile witnesses will answer and what they will not, thus affording the committee an opportunity to ask only the most damaging questions in open session. A witness reluctant to talk in open hearing can be cajoled to do so under the cover of the secret session, although the committee has the right to make the testimony public at its discretion. This is a particularly useful device for witnesses who are ashamed to name others as communists before the public.[220]

The committee will end an executive session and go into open hearings when it fears it will lose the publicity value of some especially sensational testimony. Thus, Bentley and Chambers started their testimony in executive session, but, as Stripling describes, after fifteen minutes of Chambers' testimony, one committee member interrupted:

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[218] 5 *New York City Area* (1953) 1970, 1981

[219] E.g., 2 *Infiltration—Education* (1953) 138. "I would like to ask the professor a question that I asked him yesterday." See also, *ibid.*, 164.

[220] See, for example, 1 *Motion Picture Industry* (1951) 78-111; *G. Bromley Oxnam* (1953) 128 (witness need not name source of information that a person is a Communist in open session); 3 *Radiation Laboratory* (1950) 3455; *Communist Press* (1952) 2304 ("You would not have any hesitation in giving the names of your counselors in executive session, would you?").

"Hell, why is this in executive session? This should be in the open." [221]

* * * * * *

The short of the matter is that the witness who is unwilling to collaborate in his exposure comes to the committee with no rights at all. "The rights you have," said Chairman Thomas when he directed counsel for a witness to testify and counsel insisted that he in turn had a right to counsel, "are the rights given you by this committee. We will determine what rights you have and what rights you have not got before the committee." [222]

D. The committee as a repressive, illegal and partisan governmental power system.

1. The committee as super-legislature, detective agency, prosecutor and court.

In examining the activities of the committee, one is struck by the curious fact that, on the one hand, the committee's activities in the legislative sphere are and have been extremely limited, and, on the other hand, it has functioned most actively, if not exclusively, in areas confided to other branches of the government.

During the committee's first seven years of existence no bills were referred to it since it was only a special committee. The published works of the committee for this period include about 10,380 pages of public hearings in 17 volumes; 3,609 pages of executive hearings in 7 volumes; 2,268 pages of appendices in 8 volumes; and 15 reports totalling 522 pages, only one of which contained recommendations for legislation.

Despite this prodigious activity, only one bill introduced by a member of the committee during this period became

[221] Stripling, *The Red Plot Against America* (1949) 100. For another example of manipulation of open and executive sessions, see 1 *Los Angeles Professional Groups* (1952) 2688-2689.

[222] *Espionage in the Government* (1948) 1310.

law.[223] The only other legislation passed in this period for which the committee was indirectly responsible was a series of riders attached to appropriation bills denying federal employment to those who advocate the overthrow of the government,[224] and a provision attached to an appropriation bill,[225] declared unconstitutional as a bill of attainder.[226]

During the committee's existence as a standing committee no significant change occurred. For the period up through the end of 1952 the committee published 11,743 pages of hearings, both executive and public in 87 volumes, only three of which dealt with proposed legislation; 9 volumes of miscellaneous publications totalling 395 pages; 29 reports totalling 1801 pages; various anti-subversive guides amounting to 352 pages; and compilations of court opinions and excerpts from hearings amounting to 112 pages.

However, the legislative accomplishments of the committee for this period were slight when measured against the total of the committee's activities. The committee held hearings on proposed legislation for the first time in 1947. At that time the committee devoted five days to hearings on H. Res. 1884 and H. Res. 2122. In 1948 it again held hearings on proposed legislation. Seven days were devoted to hearings on H. Res. 4422 and H. Res. 4581 which led to the drafting and reporting of the Mundt-Nixon Bill which was introduced as H. Res. 5852. The last and third hearings on proposed legislation came in 1950 when ten days were devoted to two "Internal Security" bills: H. R. 7595 (a revised version of the Mundt-Nixon Bill) and H. R. 9903. As a result of these hearings, the committee reported

[223] 54 Stat. 1201, 18 U. S. C. sections 14-17 (1940).

[224] See *United States* v. *Lovett*, *supra*, 308.

[225] Section 304 of the Urgent Deficiency Appropriation Act of 1943.

[226] *United States* v. *Lovett*, *supra*, 309-312.

favorably upon a new bill drafted in committee, H. R. 9490, which was passed by the House and absorbed into the McCarran Bill in the Senate which was enacted into law as the Internal Security Act of 1950 over a veto by the President.

The only other legislative accomplishment of the committee was the incorporation of many of its recommendations regarding security against "subversive" aliens into the McCarran-Walter Immigration Bill. It is manifest that the stubby tail, "legislation," wags the enormous dog, "exposure."

The committee really functions as a super-legislature creating political offenses in areas constitutionally barred to Congress. It has created the high crime of being a subversive or Communist, as well as petty political crimes, until by now it has defined a wide spectrum of shades or degrees of political wrongdoers—the "fronter", the "dupe", the "fellow traveler", the "supporter of Communist causes", etc.

The committee spends all of its time policing the crimes which it has thus created and punishing through its own unique sanction, exposure, those whom it finds guilty. This aspect of its activity combines the functions of a governmental police force, a grand jury and a court.

Some of the committee's activities resemble the filing and investigative techniques of the FBI. It takes the evidence which it receives from its investigators, uses its process to subpoena and interrogate the accused and either dismisses him or recommends punishment, including indictment. Thus it performs functions resembling those of a grand jury.

The committee [illegible] itself as a body authorized to exercise powers w[illegible]held from the FBI or the grand jury.[227]

[227] *Interim Report on Espionage* (1948) 1-2.

Thus, while the FBI can accumulate facts, it cannot disclose them; the committee does both. While a grand jury finds facts, it must do so in secrecy in order to protect those who are deemed innocent until found guilty. The committee publicizes its information before, during and after the fact determination is made. The grand jury is subject to the Attorney General's decision as to what evidence comes before it and what action will be sought; the only limitation on the scope of the committee's activity is its own subjective prejudices. It reveals its evidence freely and without evaluation or verification, and makes its decision as to guilt or innocence with a finality far exceeding that of a presentment or indictment.[228]

In its own words, the committee is a "'grand jury' in session to investigate un-American activities at all times." [229] The committee's hope in the espionage hearings, for example, was "that by diligently pursuing its activities in this case our committee * * * will secure further indictments or confessions * * *." [230]

As a grand jury, the committee has made many recommendations that certain individuals be prosecuted for violation of law. Thus, it urged deportation proceedings against Harry Bridges under the immigration and naturalization laws.[231] It informed the Department of Justice that it had established "a clear prima facie case" against Gerhart Eisler for "1. contempt of Congress. 2. perjury. 3. conspiracy to overthrow the government. 4. income tax evasion. 5. falsification of passport". [232] The committee also claims credit for the prosecution of Browder and

[228] *Ibid.*; criticism of Congressman Keller, 84 C. R. 1109 (1939).

[229] 91 C. R. 275 (1945) (Mr. Rankin); see also, 91 C. R. A4456 (1945), 93 C. R. 1131 (1947); *Espionage in the Government* (1948) 537; *Eugene Dennis* (1947) 13, 14.

[230] *Soviet Espionage Report* (1948) 11.

[231] 76th Cong., 1st Sess., H. Rept. 2 (1939) 88-89.

[232] *Gerhart Eisler* (1947) 35.

others on passport fraud and other charges,[233] and "for sending Alger Hiss to prison".[234] The committee has stated that a subpoena is considered by members of the public "as the equivalent of a statement of charges or a warrant of arrest for the person served".[235]

A member of the committee has referred to it as "the greatest open court in the country".[236] Like a court, it makes findings of guilt or innocence, and like the ancient ecclesiastical tribunals it proceeds by oath *ex officio* to try the political orthodoxy of its victims. As in the case of resistance to the test oath, the committee subjects the witnesses which it condemns to civil disabilities, such as loss of employment, and public condemnation. In addition, the witness who is unwilling thus to acquiesce in an enforced confession of "subversion" is subject to the contempt sanctions of Section 192, a statute which was passed for the altogether different purpose of eliminating obstructions to the legislative process.

The committee weighs conflicting evidence[237] and brings witnesses face to face or confronts them with accusations demanding affirmation or denial.[238] The committee decides the guilt or innocence of organizations and individuals. One organization, for example, was handled in this way:

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[233] E.g., 10 *Investigation* 6353; *Motion Picture Industry* (1947) 328; *Gerhart Eisler* (1947) 13; Carr, *op. cit.*, 275-276; Thomas, *op. cit.*, 5; 86 C. R. 578 (1940).

[234] 4 *Los Angeles Professional Groups* (1952) 4161.

[235] *Annual Report*, 1951, 4-5; committee hearings do result in outright charges. One witness was told by the chairman, "I am accusing you of being a Communist. Is that true or not?" 4 *Los Angeles Professional Groups* (1952) 4128.

[236] *Espionage in the Government* (1948) 846. See also *ibid.*, 847, 892, 926.

[237] *Soviet Espionage Report* (1948) 2 ("* * * the confrontation of the two men * * * has definitely shifted the burden of proof from Chambers to Hiss * * *."). See also, 3 *Investigation* (*Exec.*) 1400; 14 *Investigation* 8164-8230.

[238] 1 *Infiltration—Labor Unions* (1949) 603.

> "* * * this congressional committee found that this organization and others were controlled by the Communist Party. The evidence then obtained and obtained since by the committee demonstrates that fact, and there can be no further controversy as to the parentage of this organization * * *." [239]

In dealing with Professor Frederick L. Schuman, the committee announced:

> "We will have all of them [Prof. Schuman's articles] before us and we will undertake to pass on them. Whatever judgment the committee will pass on them you may rest assured will be in the light of all the circumstances." [240]

Sometimes the committee is stricken with doubt:

> "I can't, in my own mind, reach the conclusion that Mr. March was a member of the Communist Party." [241]

In one instance the witness stated he was not now a Communist, but invoked the Fifth Amendment as to prior membership. Congressman Velde commented:

> "Personally, I can only draw one inference from the manner in which you have testified, and that is that you * * * continue to be a member of the Communist Party." [242]

One witness stated to the committee, "That is the same as saying, I believe that this committee considers you guilty." Mr. Walter replied, "Yes, we do. At least I do." [243]

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[239] 9 *Investigation* 5508. See also, *The Honolulu Record Report* (1950) 12; *Review of Methodist Federation for Social Action* (1952) 68-69.

[240] 7 *Investigation* (*Exec.*) 3147.

[241] 3 *Investigation* (*Exec.*) 1412.

[242] 2 *Los Angeles Professional Groups* (1952) 3573. See also, *Massachusetts* (1951) 1367.

[243] 3 *Infiltration—Education* (1953) 998. See also, *New York Times*, Dec. 11, 1948, Mundt: "* * * we shall continue to try to discover, to disclose and to *punish* disloyal employees" (emphasis added); 6 *Investigation* (*Exec.*) 2916.

The committee not only punishes the political wrongdoer; it aso clears repentant political sinners. It is the policy of the committee to give persons who have been the subject of testimony before it an opportunity to appear, "to deny admit or explain such sworn accusations".[244] Many hearings are devoted exclusively to witnesses who testify that they are no longer Communists, fronters, dupes and the like. Edward G. Robinson not only has testified twice; he has also given the committee for publication in its hearings a complete statement on all contributions he had ever made to organizations.[245]

The committee has even gone so far as to allow itself to be used as a means of clearance by a person who had not been attacked before it, but who had been "adversely mentioned in publications throughout the country."[246] The committee's clearance procedures have been heavily resorted to by individuals whose livelihood and earning capacity depend upon their public reputation, as for example those employed in the entertainment field. Where the person whose political reputation is suspect is a valuable "property" in the theatrical sense, the clearance is staged with elaborate publicity and the anxious cooperation of those whose economic interests are threatened. The committee's judgment of absolution in such cases is

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[244] 3 *Los Angeles Professional Groups* (1952) 3939. See also, 1 *Los Angeles Professional Groups* (1952) 2486; *Testimony of Edward G. Robinson* (1950) 3299; 2 *Hawaii* (1950) 1584; *Interim Report on Espionage* (1948) 3.

[245] *Testimony of Edward G. Robinson* (1950) and 7 *Motion Picture Industry* (1952) 2415.

[246] *Testimony of Hazel Scott Powell* (1950) 3611. Mrs. Powell, a Congressman's wife, received prompt attention from the committee. But others have to wait longer to obtain absolution. Musician Artie Shaw complained: "We have all this * * * haze of rumor started about me. * * * about three years ago it began to affect me as a citizen very seriously. * * * I have had to wait three years to ask to appear before this committee so I can clear myself * * *." 1 *New York City Area* (1953) 1188-1189. See also, 3 *Minority Groups* (1950), *Testimony of "Josh White"*; 1 *Motion Picture Industry* (1951) 256-257; *G. Bromley Oxnam*, 40 ff.

given widespread publicity so as to eliminate any pre-existing political taint.[247]

In view of the fact that a large proportion of the 35,000 names in the committee's Index are persons who have been "named" before the committee, the committee's "clearance" procedure may well develop into a highly significant aspect of its work. One witness, as a matter of fact, saw the committee as nothing but a clearance forum.

> "Mr. Doyle: * * * Do you feel, then, that this committee * * * is serving a valuable function to meet this problem [communism]?
>
> Mr. Collins: Well, it has served a valuable function as far as I am concerned in that it has given me an opportunity to clear myself, and it gives that possibility to other people. Insofar as its other activities, I * * * am not familiar enough with it." [248]

The committee's continued emphasis upon the fact that a person named may appear to clear himself carries with it the disturbing implication that if he does not, he cannot be properly cleansed. This was stated explicitly by Chairman Wood, who told a witness:

> "Your presence before this committee is the best form that I know of for you to relieve yourself of any smear or blacklist." [249]

A disturbing by-product of the necessity of a "clearance" to rub off a smear is the increasing amount of correspondence the committee receives from persons bearing similar or the same names as persons named and mistaken for them. These persons, subjected to suspicion and harass-

[247] The most recent application of this full-scale clearance treatment is the case of Lucille Ball, who found it necessary to use the committee as a forum for explaining that a political aberration of her youth resulted from the folly of indulging the political whims of a now-dead grandfather. *New York Times*, Sept. 13, 1953.

[248] 1 *Motion Picture Industry* (1951) 256-257

[249] 4 *Motion Picture Industry* (1951) 1506

ment, write the committee denying any connection with the individual named; the committee duly enters the "clearance" in the record, but "cannot undertake * * *" to vouch for the facts of the case."[250]

2. The committee's conflicts and competition with other governmental agencies.

Since the committee has functioned largely in areas for which other agencies of government have primary responsibility, it is not surprising that it is in constant conflict with them. Once the committee has stalked its prey, the mere fact that a loyalty board is examining the record of the individual or has reached a decision becomes irrelevant. Thus, the committee published a report on Dr. Edward U. Condon, director of the National Bureau of Standards, at a time when it was aware that the Atomic Energy Commission was still investigating him, and had not yet made its final judgment.[251] Four and a half months after the publication of the subcommittee's unsubstantiated finding that Condon was "one of the weakest links in our atomic security," the AEC made public a report giving Condon security clearance.[252] The disgruntled committee retaliated by using its subpoena powers against officials of the Department of Commerce, who refused to testify concerning the clearance or give the department records on the case.[253]

[250] 3 *Los Angeles Area* (1953) 642. For illustrations of many such disclaimers, see *ibid.*, 640-641; 2 *Los Angeles Area* (1953) 439, 465, 469, 584, 588; 4 *Los Angeles Area* (1953) 784, 840; *Cincinnati Area* (1950) 2823.

[251] *Report of Subcommittee on National Security*; see also Carr, *op. cit.*, 131-153.

[252] 94 C. R. 9547 (1949).

[253] Carr, *op. cit.*, 150. Prof. Carr says of the committee's behavior in this instance (at 138): "Its own independent action on March 1 was not only an improper effort by a legislative body to usurp a duty assigned by law to an administrative agency and in this instance in the process of being performed, but was also an attempt to turn the fact that the AEC had not yet completed its investigation of Dr. Condon or passed final judgment upon him into a finding of guilty against him."

Committee-FBI conflict has been a serious problem from the outset of the committee's activities. At one time Attorney General (now Mr. Justice) Jackson accused the committee of undermining public confidence in the bureau, hampering and duplicating its work, and using witnesses which the FBI had determined to be thoroughly unreliable.[254]

In its *Report on Soviet Espionage Activities in Connection with the Atom Bomb* (1948), the committee charged that the evidence it uncovered was in FBI files and before the Attorney General.

> "The committee believes it important that the American people be apprised of those facts by someone. Since the executive has refused to permit anyone connected with the executive branch of the government to make disclosure thereof, the committee considers it its duty to do so" (at 165).

The evidence acquired through committee investigation had already been gathered by the FBI, the Manhattan Engineering District, and the armed forces intelligence units.[255] The executive branch of the government had determined as a matter of policy not to reveal what information it had to the public. The committee, however, requires publicity to sustain its work and therefore the very silence of the executive was a reason for publicizing the information.

The committee has likewise competed with the federal grand jury. In the 1948 espionage hearings, the committee entered a field already being examined by a federal grand jury which had been sitting for more than a year, and which was hearing witnesses on communism in the government. Both groups subpoenaed the same witnesses, and raced to hear them first. The committee carried the competition so far as to resist for a week the grand jury's re-

[254] *New York Times*, Nov. 24, 1940; 86 C. R. 13768-13769 (1940).

[255] Carr, *op. cit.*, 174.

quest for documents it had received.[256] Subsequently the grand jury reported in its presentment that the large number of witnesses pleading the privilege against self-incrimination had done so because publicized charges and counter-charges of "other investigating bodies" had "alerted" them to the circumstances which the grand jury must examine in secrecy. It concluded: " * * * the grand jury recommends that all investigating bodies conduct their inquiries into espionage in secret."[257] If the committee ever weighed the necessity of secrecy of the grand jury against its own need for headline sustenance, the result is apparent. When the grand jury recessed without any indictments, "the committee felt compelled to bring to the attention of the American people the information that it had before it."[258]

The committee frequently clashes with the executive on the issue of making information public and opening to the committee files in possession of the executive.[259] The conflict over access to the executive department's files is a manifestation of a continuing competition with the executive for the right to determine national policy in the area of "subversion."[260]

3. The committee as a partisan political agency.

The committee plays an aggressive role in the political arena. From the beginning, the committee has exploited charges of "subversion" among government employees as a partisan political instrument. Every controversial New

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[256] *New York Times*, Dec. 11, 1948; Carr, *op. cit.*, 276-277.

[257] *New York Times*, Apr. 27, 1949.

[258] *Interim Report on Espionage* (1948) 7-8.

[259] E.g., *Report on Soviet Espionage Activities in Connection with the Atom Bomb* (1948) 162, 184.

[260] The committee, of course, is now engaged in serious rivalry with other congressional anti-subversive committees as its conduct in connection with the White matter demonstrates.

Deal program was fought by the committee by attacking the loyalty of government personnel. More recently, this emphasis has been strengthened.[261] The partisanship of the committee in this area was exposed by the recent issuance of subpoenas by the chairman of the committee, without consulting its members, upon former President Truman, Governor Byrnes, General Vaughan and Mr. Justice Clark in connection with the Harry Dexter White case. The revealing statements of Representative Francis E. Walter in this matter were reported in the *New York Times* of November 11, 1953:[262]

> "Representative Walter said that Mr. Kunzig [committee counsel] told three Democrats about the subpoenas for Messrs. Truman and Byrnes after they had been issued. He first told them about the plans for questioning General Vaughan at a joint session to provide 'a more juicy hearing,' then, according to Mr. Walter, the staff member added:
>
> 'Hold on to your seats, gentlemen, while I tell you about two other subpoenas we have out. One is for Governor Byrnes and the other is for former President Truman.'
>
> He said Mr. Kunzig regretted the Senate committee had reached General Vaughan first and expressed belief that 'we should get in the act.'
>
> The Republicans apparently are planning closed hearings, but the Democrats said they would argue for open hearings, with live television permitted, 'so the people may know what is going on.'
>
> While Mr. Walter said that the House committee had sent a process server by plane to South Carolina 'to beat the Senate to the punch,' for Governor Byrnes, the Senate subcommittee announced it had concluded ar-

[261] See, e.g., 2 *Infiltration—Education* (1953) 215; Carr, *op. cit.*, 86; 9 *Investigation* 5685.

[262] Congressman Walter termed the issuance of the subpoena on the former President as the "most incredible, insulting, un-American thing that I have encountered in my twenty-one years in Congress." The use by the Congressman, a veteran of the House committee, of the term "un-American" in this connection merely emphasizes what we have been saying throughout, that this term is wholly subjective.

> rangements for the South Carolina executive to answer a series of questions in writing without appearing personally."

The history of the committee in relation to the Roosevelt and Truman administrations was neatly described by chairman Thomas to committee member Rankin:

> "We have been unearthing your New Dealers for two years, and for eight years before that." [263]

This "unearthing" of the New Deal began in the committee's first year. Congressman Thomas, just before the 1938 elections, delivered a radio talk linking the New Deal and communist programs.[264] At hearings prior to that election, the National Labor Relations Board was under attack, and the administration's labor program was identified with communism because the Communists were supporting it.[265]

The hearings regarding the Office of Price Administration in 1945 coincided with the consideration by the House of a bill renewing OPA legislation,[266] and the stated goal—subversive radio scripts—was put aside frequently in order to delve into the OPA itself.[267] The Hollywood motion picture probe resulted in the unsupported allegation that the White House had sought to have Hollywood produce pro-Soviet films and had actually used coercion to that end.[268]

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[263] *Espionage in the Government* (1948) 548.

[264] *New York Times*, Oct. 15, 1938. "The plan is to sabotage the capitalistic system by placing upon that system burdens of restrictive legislation and staggering taxation."

[265] 3 *Investigation* 2173, 2199-2200. See also 84 C. R. 1108 (1939).

[266] Carr, *op. cit.*, 24; *Office of Price Administration* (1945) 1-2.

[267] *Office of Price Administration, passim*, especially Bowles testimony.

[268] *Motion Picture Industry* (1947) 33-35, 39, 80-81, 166.

The committee has directly intervened in national and local elections. It recently conducted hearings in Los Angeles, "to find out to what extent the Communist Party in the city of Los Angeles is attempting to influence the coming elections for the board of education in this city."[269] The committee summoned witnesses known to be hostile to it, and after thorough questioning on their associations, beliefs, and political past, attempted to link them to one of the organizations participating in the election campaign. The committee charged "that almost every known Communist, every known fellow traveler * * * is in one way or another connected with one or another of these organizations."[270] Irreparable prejudice was created when, in the confusion as to the names of the school organizations he was attacking, Congressman Jackson opened many of them to public suspicion of subversion. He was required to "clear" publicly the offended groups.[271]

The committee entered the 1944 national elections with a hearing on the CIO Political Action Committee and the charge that it was a Communist organization in an open attempt to discredit the liberal supporters of the Democratic Party.[272] The committee similarly entered the gubernatorial race in Michigan in October, 1938, when it sought to discredit Governor (later Mr. Justice) Murphy by linking him with communists.[273] In Minnesota it performed a similar role.[274]

The committee knows how to use its powers not merely to influence the political campaigns of others but to further the political ambitions of committee members. The pub-

[269] 3 *Los Angeles Area* (1953) 620.

[270] *Ibid.*, 622.

[271] *Ibid.*, 667, 687.

[272] 17 *Investigation* 10211.

[273] 2 *Investigation* 1487 ff.

[274] *Ibid.*, 1359 ff. See also 84 C. R. 1109-1110 (1939). For similar tactics in California see 3 *Investigation* 2034; 84 C. R. 1121 (1939).

licity which the chairman and members receive is valuable political capital. Thus committee members who need political help either for re-election, to pay off a political score, or to advance their Senatorial ambitions, will find the committee most cooperative.

The committee has already conducted investigations in areas located in the home states of seven of its nine members.[275] Of the fourteen geographical areas investigated to date by the committee, eleven have been in the home states of members of the committee at that time. This correlation between the locale of the investigation and the home states of the committee members has resulted in numerous opportunities for the local man to shine at the local investigation by presiding as chairman of the investigating subcommittee.

Thus, the Columbus investigation was presided over by Representative Scherer of Columbus, Ohio.[276] The Philadelphia and western Pennsylvania investigations were conducted by Representative Walter of Pennsylvania.[277] The Albany hearings were held with Representative Kearney of New York presiding.[278] The investigation of aircraft defense industry in Southern California was presided over by Representative Voorhis of California, the only committee member present.[279] The motion picture investigation in Los Angeles was conducted at times with Representative Donald Jackson of California as a subcommittee of one.[280]

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[275] Los Angeles; Albany and New York; Detroit; Columbus and Cincinnati; Western Pennsylvania and Philadelphia; Chicago.

[276] *Columbus Area* (1953) 1739.

[277] *Philadelphia Area* (1952) 4381; 2 *Western Pennsylvania* (1950) 2365; 3 *Western Pennsylvania* (1950) 3007, 3029; In the former, Mr. Walter was part of a subcommittee of two, in the latter he was alone.

[278] 1 *Albany Area* (1953) 2361, 2417; 2 *Albany Area* (1953) 2473, 2537.

[279] 4 *Investigation (Exec.)* 1839.

[280] 6 *Motion Picture Industry* (1951) 2061.

Jackson also presided at the Los Angeles hearings over a subcommittee of himself and Representative Clyde Doyle of California.[281] Some of the investigation into professional groups in Los Angeles was conducted by Doyle, who presided over a subcommittee consisting of Mr. Jackson and himself.[282]

Earlier committees also engaged in this practice. Hearings into conditions at Japanese detention camps were conducted with Representative Costello of California presiding.[283] A subcommittee of one to investigate communism in Alabama and Tennessee consisted of Representative Starnes of Alabama.[284]

Another way in which the committee uses its powers for political purposes is through the issuance of its own propaganda. This program is designed to ensure that communism and its satellite group of political offenses will be defined in horrendous enough terms so that the exposure of the individual will bring into play sufficiently harsh private sanctions. In addition to its own reports and press releases, the committee has issued in enormous quantities publications dealing with communism.[285] These publica-

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[281] 3 *Los Angeles Area* (1953) 685.

[282] 4 *Los Angeles Professional Groups* (1952) 4169.

[283] 15 *Investigation* 8833.

[284] 3 *Investigation* (*Exec.*) 983.

[285] See, for example,
100 Things You Should Know About Communism in the U. S. A.
100 Things You Should Know About Communism and Religion
100 Things You Should Know About Communism and Education
100 Things You Should Know About Communism and Labor
100 Things You Should Know About Communism and Government
Spotlight on Spies
Review of the Scientific and Cultural Conference for World Peace
Report on the Congress of American Women
Report on the American Slav Congress and Associated Organizations
The Communist "Peace Petition" Campaign (Interim Statement)
Report on the National Lawyers Guild

(Footnote Continued on Page 130)

tions are not reports to Congress at all, but are rather another manifestation of the emergence of the committee as an independent and autonomous entity functioning outside of the American political system as it has been traditionally defined.[286]

(Footnote Continued from Page 129)

Report on the Honolulu Record
Report on the National Committee to Defeat the Mundt Bill
Statement on The March of Treason
Report on the Communist "Peace" Offensive
The Shameful Years, Thirty Years of Soviet Espionage in the United States
Review of the Methodist Federation for Social Action

[286] The committee's activities as a propaganda agency led Congressman Arthur D. Klein to make the following protest in 1948:

October 11, 1948

HONORABLE KARL M. LECOMPTE
Chairman
Committee on House Administration
House of Representatives

DEAR MR. CHAIRMAN:

It has come to my attention that the Committee on Un-American Activities is publishing propaganda without authority of the House of Representatives, paying for it out of funds appropriated for the purposes of Rule 21(q), and that not only has payment for one such publication been approved by your committee but the Committee on Un-American Activities now has ready for printing a new propaganda booklet with a planned press run of 100,000 copies, which it also plans to pay for from funds not authorized for such purposes.

I wish to enter my emphatic protest against allowing the committee to go so far outside the mandate of its rule and its arrogation to itself of powers reserved to the whole House.

It is not my purpose to enter into any extended discussion of the merits of the pamphlets, for the obvious impropriety of the action is of sufficient gravity to stand alone.

However, I cannot avoid pointing out that the Committee on Un-American Activities has been functioning for many months, even years, as a valued tool of the Republican National Committee, and that the pamphlet already issued, while probably reasonable enough of and by itself, has been widely disseminated as Republican campaign literature, apparently at the taxpayers' expense.

The rule under which the Committee on Un-American Activities was created as a standing committee is clear and unequivocal.

(Footnote Continued on Page 131)

E. The resolution as consistently applied by the committee violates constitutional principles.

As we have demonstrated, the key to the committee's functioning and the characteristic way in which it interprets its resolution is the exposure system. Individuals who are identified with the condemned ideas and organizations, either directly or by association, are under compulsory

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(Footnote Continued from Page 130)

While I know that you yourself are fully cognizant of the language of the rule, it is quite obvious that neither the Members nor the staff employees of the Committee on Un-American Activities are familiar with the wording of Rule 71(q) of the Rules of the House of Representatives as adopted in the Congressional Reorganization Act of 1946—or, if they are, they do not appear to feel bound by it.

Therefore I am incorporating the text of the rule as it defines the mandate from the House Manual of the 80th Congress.

"Rule XI (q) (1) Committee on Un-American Activities. (A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable."

Clearly there is no authorization in the rule, nor in the appropriating resolutions, to authorize the preparation or printing or dissemination of Republican party propaganda by the Committee on Un-American Activities, nor for your committee to approve the expenditure of committee funds for such purposes.

"100 Questions About Communism," while typographically excellent, cannot by any flight of fancy be construed as an investigative or legislative report or recommendation within the meaning of the rule; and if it were a report the legal limitation of printing in the

(Footnote Continued on Page 132)

process summoned by the score before the committee and interrogated under oath and threat of contempt sanctions concerning their own beliefs, affiliations and associations

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(Footnote Continued from Page 131)

absence of adoption of a print resolution by the House is 1,000 copies.

By the same token, the planned "100 Questions About Communism and Religion" cannot be justified as a committee report, nor could the printing of 100,000 copies without prior authorization of the House be justified under any rule or statute.

I am particularly disturbed by the irregularity and impropriety of the actions taken by the Committee on Un-American Activities because this committee, laboring in a delicate field of human freedoms and national security, should be like Caesar's wife—above suspicion.

When the Committee on Un-American Activities sets up in business as a propaganda and publishing agency without authorization from the House of Representatives—indeed, without even public knowledge and discussion—it lays itself and the House open to justified criticism, and subverts the orderly procedure of legislative business.

Most emphatically, I urge you and your committee to refuse to authorize payment to the Government Printing Office of any vouchers for the printing of any propaganda pamphlets from the committee, or any copies of reports or recommendations beyond the statutory provision, until and unless the House has previously approved the expenditure by formal resolution.

I further urge you to instruct the Public Printer that he will accept composition or print orders not clearly authorized by the rule at his own risk. I make this latter suggestion because I have been given to understand that a great deal of expensive composition already has been completed for projected publications of the Committee on Un-American Activities.

I should be grateful to you also for a statement of the total amount of funds already spent by the Committee on Un-American Activities for unauthorized printing of propaganda publications since the adoption of Rule 21(q). I think the American people deserve to have the information.

Please be assured of my deep respect for the correctness of your own position in this difficult matter, and of my confidence that you will act promptly and effectively to protect the dignity and probity of the House.

Cordially yours,

ARTHUR G. KLEIN
Member of Congress

past and present, as well as those of others. Putting to one side the issue to be discussed subsequently of whether the First Amendment permits such *ad hoc* questions, the point we make here is that this system is designed for a purpose quite foreign to legislation, to bring to bear upon the individual holding views disapproved of by the committee, the full weight of the government's disapproval.

As we have said, the government has no power under the First Amendment to classify or censor ideas and it has less power to exert its authority against individuals for the sole purpose of exposing their link to ideas and organizations whose expression and functioning constitute the exercise of First Amendment rights. The interference with the democratic process could hardly be more crude. While the discouraging and intimidating consequences to free expression are great when the government uses its powers of inquiry for the purpose of separating orthodox from unorthodox ideas and affiliations, those consequences may ultimately lose their effect. More hardy individuals may not be deterred by the fact that they espouse ideas or belong to organizations which are condemned by the committee. But the committee knows this, too. In order to make certain that the effectiveness of the censorship system will not depend solely upon the persuasiveness of its judgments, it uses its power to expose, attack and harass the individual. Thus in America today free expression is subject to an enormous hazard. The elimination of dissent, as this Court has predicted it would (see *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624) has led to the elimination of dissenters.

The right to form and participate in associations is an expression of and is protected by the free assembly and speech guarantees of the First Amendment. The process of group formation in the public interest is the fulfillment of democracy. It is the means through which the rights of speech, press, petition and assembly are made effective. From the beginning, the vigorous activity of private or-

ganizations and associations has been a hallmark of the democratic process.[287]

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[287] The unique contribution of voluntary associations to the formation and strengthening of democratic processes and institutions in the United States has been the subject of frequent comment. On the significance of groups in American life, see Schlesinger, *The Rise of the City—1878-1898* (New York, 1933), 409-410; Bryce, *The American Commonwealth* (New York, 1910), 294; de Tocqueville, *Democracy in America* (New York, 1900), 114-118. On the vital role played by voluntary groups in the founding of the American republic, see Van Tyne, *The Causes of the War of Independence* (Boston, 1922), 373, 374-376, 427-428 (Committees of Correspondence).

On the contributions of groups and voluntary associations in particular fields, see

Race Relations:

Hobbs, *The Antislavery Impulse* (New York, 1933); McMaster, II *History of the People of the United States* (New York, 1895), 21; Myrdal, II *An American Dilemma* (New York, 1944), 810-857;

Peace Movements:

Curti, *American Peace Crusade* (Durham, N. C., 1929); Schlesinger, *The Rise of the City* (New York, 1933), 365-366;

Economic Relations:

Hinds, *American Communities and Cooperative Colonies* (Chicago, 1908; Noyes, *History of American Socialisms* (Philadelphia, 1870); Adams, ed., VI *History of Cooperation in the United States*, Johns Hopkins Studies in Historical and Political Science (Baltimore, 1888);

Women's Rights:

Schlesinger, *New Viewpoints in American History* (New York, 1926), 126-160;

Public Schools and Adult Education:

Curti, *The Growth of American Thought* (New York, 1943), 349-352, 596-597; Post, *Popular Free Thought in America* (New York, 1943), 87;

Land Reform and Colonization:

Zahler, *Eastern Workingmen and National Land Policy* (New York, 1941); McMaster, *op. cit.*, VI, 109;

Agricultural Associations:

Oberholtzer, III *A History of the United States Since the Civil War* (New York, 1926), 102-109; Hicks, *The Populist Revolt* (Minneapolis, 1931);

Humanitarian and Related Movements:

Fish, *Rise of the Common Man* (New York, 1927), 259-260; Stewart, *The National Civil Service Reform League* (Austin, Tex., 1929); Nevins, *The Emergence of Modern America* (New York, 1927), 334; McCrea, *The Humane Movement* (New York, 1910).

Obviously, the right to engage in political activity enjoys constitutional protection. Indeed, as we have shown, this right lies at the heart of the First Amendment. The right to assemble and to associate around an idea or program is secured not simply to protect the liberty of the individual but to make it possible for him to share in basic political processes.

> "It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. *DeJonge* v. *Oregon*, 299 U. S. 353, 364, and therefore are united in the First Article's assurance. Cf. 1 Annals of Congress 759-760.
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> "This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience [citing cases]. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." *Thomas* v. *Collins*, 323 U. S. 516, 530-531.
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> "One of the chief reasons for freedom of the press is to insure freedom on the part of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people. Brandeis, J., in *Whitney* v. *California*, 274 U. S. 357, 375. Hughes, C. J., in *Stromberg* v. *California*, 283 U. S. 358, 369. Individuals seldom press their views upon the electorate without organization. They have a right to organize into parties, and even into what are called 'pressure groups,' for the purpose of advancing causes in which they believe." *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230, 252.
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> "The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of

> acting in common with them. The right of association therefore appears to be almost as inalienable in its nature as is the right of personal liberty. No legislator can attack it without impairing the foundations of society." de *Tocqueville, I Democracy in America* 196.

Political association and affiliation is the form which the right to assembly characteristically takes in America. The formation of political parties has been not only the accepted but the necessary form of political action and expression. See, for example, Beard, *The Republic* (New York, 1943), 267-273; McLaughlin, "The Significance of Political Parties," in 101 *Atlantic Monthly* 145-146 (February 1908); Merriam, *American Political Ideas—Studies in the Development of American Political Thought*, 1865-1917 (New York, 1920), 291-292; Spitz, *Patterns of Anti-Democratic Thought* (New York, 1949), 110.

The right of political association and affiliation is thus an exercise of a fundamental right shaped by the realities of our time and fully protected by the First Amendment. If an activity is protected by the First Amendment, then its exposure, as the committee practices it, is unconstitutional. Certainly no one would dispute the fact that Congress could not pass a law authorizing the kinds of compulsory disclosures systematically demanded by the committee over the past fifteen years. But, as we have shown, the power of inquiry is also limited by the First Amendment. More than this, the power of inquiry is subject to certain unique and inherent limitations which prevent its use for the exposure of political expression or affiliation. We insist that in passing upon the precious rights of speech and assembly which are involved in this case, the Court must recognize five relevant limitations upon the power of inquiry, in addition to the First Amendment. These are (1) the scope of the power is limited by the legislative function; (2) congressional inquiry is unauthorized into personal and private affairs; (3) in any event, inquiry into the private affairs of private citizens may be con-

ducted only to the extent that some pressing legislative purpose makes it necessary; (4) the looseness of legislative procedures and the temptation to conduct inquiries for partisan political ends require sharp limitations of the investigative power, and (5) the authorization for exercising the power must be precisely phrased so that the witness may not be wrongfully compelled to make disclosures not pertinent to the inquiry.

1. This Court long ago said of the investigatory power (*Kilbourn* v. *Thompson*, 103 U. S. 168, 181) that, "It will scarcely be contended by the most ardent advocate of this power in that respect that it is unlimited." The exercise of the power must be confined to matters within the constitutional authority of Congress.[288] It is an implied power. Like other implied powers, it "is a means to an end and not the end itself" and "rests simply upon the implication that the right has been given to do that which is essential to the execution of some other and substantive authority expressly conferred." *Marshall* v. *Gordon*, 243 U. S. 521, 541.

In 1927, in *McGrain* v. *Daugherty*, 273 U. S. 135, 173-174, the Court reiterated that the power to investigate is not a "general" one but must be exercised for a legislative purpose:

> "* * * the two houses of Congress, in their separate relations, possess not only such powers as are expressly granted to them by the Constitution, but such auxiliary powers as are necessary and appropriate to make the express powers effective; and * * * neither House is invested with 'general' power to inquire into private affairs and compel disclosures, but only with such limited power of inquiry as is shown to exist when the rule of constitutional interpretation just stated is rightly applied."

[288] *Barry* v. *United States ex rel. Cunningham*, 279 U. S. 597, 614; *Reed* v. *County Commissioners of Delaware County*, 277 U. S. 376, 388.

But the whole exposure system through which the committee functions is not in aid of the legislative process. It is indeed a rival to and a substitute for it. The committee chairman at the very beginning of its existence conceded that since the committee's legislative products might jeopardize fundamental rights, the committee would pursue the course of exposure (*supra*, note 53). And the record of the committee confirms its essentially non-legislative functions (*supra*, pp. 56-131). Thus there is no constitutional foundation for the fifteen-year non-stop exposure operation which the committee has been conducting.

Certainly, the use of the investigative power as a non-legislative instrument of mass persecution of thousands of individuals in private life finds no support in the so-called "informing function of Congress," [289] even if authorization for such function could be found in the Constitution. Indeed, the most that has been claimed for this function is that it authorizes inquiry into the affairs of government and into "the acts and the disposition of the administrative agents of the government" in order to acquaint the country with "how it is being served." [290]

2. In 1929, in *Sinclair* v. *United States*, 279 U. S. 263, 292, the Court repeated the central thesis of the *Kilbourn* case, *supra*, that the individual has "the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs." In the *Sinclair* case, this Court cited with approval all of its historic rulings protecting personal and private rights. *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 478; *Harriman* v. *Interstate Commerce*

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[289] See Wilson, *Congressional Government*, 303; cited in *United States* v. *Rumely*, 345 U. S. 41, 43.

[290] *Ibid.* See also Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 University of Pennsylvania L. R. 813-814.

Commission, 211 U. S. 407;[291] *United States* v. *Louisville & Nashville R. Co.*, 236 U. S. 318, 335; *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 305, 306.

The interest which is characteristically invaded by the committee, political expression, has a strong claim to the protection of privacy and personal security, see *infra*, pp. 153-160. If privacy places a curb upon the scope of conventional types of disclosures, it surely limits the operation of an exposure system which has as its avowed purpose the enforced disclosure of the individual's political beliefs and associations. Moreover, this is not a case where the disclosure of private matters is forced in the chambers of an administrative agency for its use in regulation. The disclosures of private and personal matters which are demanded by the committee of private citizens are dramatized to achieve the maximum of publicity. It is the purpose and plan of the committee through television broadcasts, press releases and well-timed announcements to expose the individual to the "light of pitiless publicity." *Supra*, note 53. The invasion of privacy is not an unfortunate by-product of the inquiry necessitated by some other purpose, but rather its primary purpose.

3. The power to formulate legislation is the only congressional power which can be said to require some inquiry into the private affairs of private citizens.[292] But the

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[291] It was concerning this case that Mr. Justice Holmes wrote to Harold J. Laski:

> "The claims of the Interstate Commerce Commission in I. C. C. v. Harriman, 211 U. S. 407, made my blood * * * boil and it made my heart sick to think that they excited no general revolt. The soft period of culture that I spoke of the other day tended to oblivion of the fighting significance of guarantees." *Holmes-Laski Letters, The Correspondence of Mr. Justice Holmes and Harold J. Laski, 1916-1935*, 21.

[292] The congressional functions which may be aided by investigation in addition to that of formulating legislation pursuant to Article I, Sec. 8 are the control by Congress of its members (Art. I, Sec. 15,

(Footnote Continued on Page 140)

solicitude of our law for the right of personal security and the protection from public scrutiny of the private affairs of private citizens prevents congressional investigation into those affairs as an end in itself. Inquiries of this kind can only be justified when they are directly related to legislation. Congress cannot assemble information from trade unionists, preachers, teachers, actors, writers, and scores of other classes of individuals in private employment upon the representation that such information might possibly be useful for later legislation. The importance of the right to be let alone by the government makes necessary the establishment of a convincing legislative justification, within the limitations of the First Amendment, for an inquiry into personal matters.

4. Although the committee invades some of the most important rights which a citizen enjoys—speech, press, assembly and privacy, its procedures are flagrantly unjust. The individual of whose views it disapproves receives no notice of the charges against him, no real opportunity to answer them, no effective right of cross-examination or meaningful right to counsel. The standards which govern the committee's judgment of him reflect the bias and hostility of the committee members and are designed to enable the committee to establish his guilt and to prevent him from proving his innocence. The fact that the committee is a political body leads it to multiply its excesses. Its entire functioning is frequently little more than a poorly concealed form of political campaigning, see *supra*, pp. 124-127. And such partisan political objectives as subpoenaing the former President of the United States to provide a "more juicy hearing" to "get into the act," and to "beat the

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(Footnote Continued from Page 139)

Clauses 1, 2); impeachment (Art. I, Sec. 3, Clause 6); and the power to make appropriations required for the administration of the laws (Art. I, Sec. 7, Clause 1). But all of these functions may be performed without investigation into the private affairs of private citizens.

Senate to the punch" (*supra*, p. 125), inevitably drive the committee into the exercise of irresponsible and arbitrary power. All of these evils which flow from the congressional investigative process require that the power of inquiry be supervised and limited. As Wigmore has put it:

> "Not only does the logic of the legislative needs call for a strict limitation of this power, but also the policy of the situation; for the Legislatures are not bound by, and do not employ, the evidential rules that in judicial trials protect parties and witnesses and check abuses of power * * *. Moreover, legislative inquiries are sometimes conducted for partisan purposes and personal aggrandizement, and there is a particular temptation to pursue the inquiry beyond the necessities of contemplated legislation and to assume improperly the function of a grand jury." [293]

5. We have already pointed out that the vague and broad character of the terms of the resolution authorizes a far-flung system of censorship limited only by the personal interest and prejudices of the committee members and that the very scope of the resolution interferes with freedom of expression. The contentions which have been made under this head in Point I of this brief are fortified by the detailed account of the extent and scope of the committee's hearings which has been presented in this point. But it is not merely the resolution's broad investigative threat which inhibits free expression.

The intimidating impact of the resolution is reinforced by Section 192 which compels disclosure through contempt sanctions. The crime for which Section 192 imposes penalties is the crime of refusing to "answer any question pertinent to the question under inquiry." In order to determine whether a punishable crime has been committed, it therefore becomes necessary to refer to the legislative act or resolution defining the matter under inquiry. As

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[293] 8 Wigmore, *Evidence* (3d ed.), § 2195, 80.

the Court has pointed out in *McGrain* v. *Daugherty*, 273 U. S. 135, 176, the crime is committed only when the question which the witness refuses to answer is "pertinent to the matter under inquiry." See, also, *Sinclair* v. *United States*, *supra*, and *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, 25-26. It is thus clear that the standard of guilt under Section 192 is the language of the resolution.

Because compulsory disclosure of political expression is an abridgement of the First Amendment, the resolution must precisely define the area of its operations, for the reasons which have already been stated. *Supra*, p. 50. Historic abuses in the use of the contempt power emphasize the need for definiteness in this area. Long ago, Thomas Jefferson observed as to the congressional contempt powers, "* * * if the offense is to be undefined, and to be declared only *ex re nata*, according to the passions of the moment, the condition of the citizen will be perilous indeed." *Jefferson's Manual* (Sen. ed., 1892) 194.

It was certainly an important purpose of Section 192 to cure the indefiniteness of the offense, to withdraw from Congress the power to be its own judge of the propriety of invoking the contempt sanction and to create a standard for the guidance of the courts in adjudicating congressional contempts.[294]

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[294] Thus, in the course of the debate in the Senate on Section 192, Senator Seward, objecting to the scope of the bill, stated:

> "* * * it may be a subject over which Congress has no jurisdiction. It may be foreign from all the provisions of the Constitution; it may be a local question; it may be a State question; it may be a personal question; it is not necessarily a public question."

Senator Bayard replied:

> "It is a rule of law very well settled, that if there is no jurisdiction over the subject matter, the proceeding is void. In such a case, of course, a court of justice would decide that the witness could not be compelled to answer for want of jurisdiction."

(Footnote Continued on Page 143)

When the witness comes to Washington and is interrogated concerning his political activities and affiliations, the resolution gives him no guide as to the point at which he may validly refuse to answer on the ground that the question is not pertinent to the inquiry. Mercilessly harassed by the committee in a public spectacle staged to destroy him, the witness can find no ground on which to stand in defense of his constitutional rights. While under the mental and emotional strain which almost every private citizen experiences who has been subpoenaed by the committee, he is asked questions about his associations and affiliations. The vagueness of the resolution forces him, whether or not advised by counsel, to hazard blindly between the First Amendment and a jail sentence.

Since this systematic ideological grilling is a regular feature of our national life and is reported in the news-

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(Footnote Continued from Page 142)

Senator Seward had suggested insertion of the word "material" before "question," and Senator Bayard asserted:

> "In my judgment the word 'material' is utterly unnecessary because 'pertinent' includes it."

As to Senator Seward's objection to broad jurisdiction, Senator Bayard said:

> "I am aware that legislative bodies have transcended their powers—that under the influence of passion and political excitement they have very often invaded the rights of individuals, and may have invaded the rights of coördinate branches of the Government, but if our institutions are to last, there can be no greater safeguard than will result from transferring that which now stands on an indefinite power (the punishment as well as the offense resting in the breast of either House) from Congress to the courts of justice. When a case of this kind comes before a court, will not the first inquiry be, have Congress jurisdiction of the subject-matter?—has the House which undertakes to inquire, jurisdiction of the subject? If they have not, the whole proceedings are *coram non judice* and void, and the party cannot be held liable under indictment. The court would quash the indictment if this fact appeared on its face; and if it appeared on the trial they would direct the jury to acquit." 26 Cong. Globe, 34 Cong., 3d Sess. (1857) 439-440.

papers with the same regularity as the weather forecast or the comics, its lessons are brought home to everyone. The fear and the tension which it generates are universal. Its effect upon freedom is poisonous.

Thus the resolution imposes no meaningful restraints on the committee's power to compel answers; it gives no guide to the witness in determining what questions he may legitimately refuse to answer; and it offers no standard to the court in a Section 102 proceeding in determining pertinency. Under such circumstances, irresponsibility and bias are bound to guide the committee; fear and uncertainty the witness; and timidity and confusion the court.[295]

POINT III

The resolution was unconstitutionally applied to petitioner.

In this portion of the brief we contend that even if the resolution could have constitutional application to require disclosure in some areas, petitioner, could not be constitutionally compelled to answer the questions which he declined to answer. Since most of the contentions made here are involved directly or indirectly in *United States* v. *Rumely*, 345 U. S. 41 we first turn to an analysis of that case.

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[295] In any event, judicial doubts, often very searching, concerning the abuses of the investigative power seem never to find expression in cases of this kind. In other kinds of cases, such doubts are reflected in instructions which permit juries to determine whether the defendant's challenge to the scope of the resolution establishes his good faith, and hence exculpate him (see Rashid, *The Problem of Wilful Default Before a Congressional Investigating Committee*, 35 Georgetown L. J. 527-537), or the courts themselves will as a matter of law find the question not pertinent to the matter under inquiry (see *Bowers* v. *United States*, 202 F. 2d 447 (C. A. D. C.)) or beyond the scope of the resolution (*Rumely* v. *United States*, 197 F. 2d 166 (C. A. D. C.), affirmed 345 U. S. 41).

A. The Court's decision in *United States* v. *Rumely*.

Rumely was convicted on three counts of an indictment for violation of Section 192 because of a charged failure to produce the records of the Committee for Constitutional Government, an organization of which he is executive secretary, showing the names and addresses of individuals from whom financial contributions of certain amounts had been received for any purpose during certain specified periods, as well as the failure to answer a question put to him by a congressional committee, namely, the identity of an individual who contributed $2,000 for the distribution of a book circulated by his organization. The resolution (H. Res. 298, 81st Cong., 1st Sess.), authorized the Select Committee on Lobbying Activities "to conduct a study and investigation of (1) all lobbying activities intended to influence, encourage, promote, or retard legislation * * *."

Rumely repeatedly refused to supply the select committee with the names of those who had bought the books published by his organization or ordered their distribution. His fundamental position was thus expressed to the committee (197 F. 2d 166, 170 (C. A. D. C.)):

> "I certainly refuse to disclose those names—not contemptuously, but respectfully, because I feel it is my duty to uphold the fundamental principles of the Bill of Rights. I think that there is no power to require of a publisher the names of the people who buy his products, and that you are exceeding your right."

The report of the select committee to the House revealed that the committee's distribution of printed material was for the purpose of influencing "legislation indirectly by influencing public opinion" and that such activity "constitutes an attempt by that organization to influence legislation, directly or indirectly." In addition, the committee in its report indicated that a separate and independent basis for the assertion of its jurisdiction could be found in the fact "that refusal to submit pertinent financial records

might cover subterfuges to evade the Federal Regulation of Lobbying Act, i.e., to mask contributions as purchases." *Ibid.*, 171.

The Court of Appeals found that Congress lacks the power to investigate efforts to influence public opinion and that the disclosure which Rumely had resisted constituted an infringement on free speech. It rejected the government's contentions that modern media of mass communications had made indirect lobbying techniques a far greater danger to the legislative process than personal solicitation of legislators and that for that reason it was most appropriate to apply to this entire field the disclosure therapy resorted to in the Federal Lobbying Act and the Federal Corrupt Practices Act. The court dismissed these contentions by pointing to the fact that the modern techniques referred to nevertheless involve the exercise of First Amendment freedoms and that mechanical progress could not destroy the validity of those freedoms; that Rumely's registration under the Federal Lobbying Act did not give pertinency to the inquiry, for such pertinency is established not by the activities of the witness but by the subject matter under inquiry.

This Court affirmed the judgment of the Court of Appeals and on substantially the same theory. The Court ruled that to construe the resolution of the House of Representatives as contended for by the government would create a serious constitutional question. It held that the "controlling charter of the committee's powers" contained no definition of the term "lobbying activities." 345 U. S. at 44-45. The Court therefore ruled that its duty to avoid a constitutional issue—equally applicable to legislation as to congressional resolutions—required it to construe the resolution in the restricted sense urged by Rumely, 345 U. S. at 47-48. See also to the same effect *United States* v. *Orman*, 207 F. 2d 148, 158 (C. A. 3).

We submit that the following conclusions of critical significance to the disposition of the present case may validly be drawn from the *Rumely* case.

(1) Congressional investigative resolutions are tested by the First Amendment in the same way that a statute is tested by the First Amendment and that if there is an "informing function" of Congress it also is limited by the First Amendment. 345 U. S. at 43, 45.

(2) The investigation of "indirect lobbying" and the disclosure of the names of individual financial supporters of Rumely's organization raise serious questions under the First Amendment. *Ibid.* This is so despite the fact that such disclosure imposes no legal sanction, but inhibits speech only because it creates social or economic pressures; despite the fact that disclosure legislation could possibly advance the public interest by revealing the sponsorship of ideas and despite the fact that the technique of compulsory disclosure has been increasingly resorted to police electoral and legislative process as well as other areas.

(3) Although Rumely was registered under the Federal Regulation of Lobbying Act which seeks by disclosure to deal with direct or indirect influences on the passage or defeat of legislation, the Court refused to expand the scope of the resolution to authorize the inquiry complained of. 345 U. S. at 45.

(4) Neither a favorable legislative history showing a broad purpose to probe organized influences on public opinion, a history of prior investigations into lobbying nor the select committee's own construction of its authority was deemed by the Court adequate to justify expanding the scope of the resolution. See 197 F. 2d at 178-186.

(5) The resolution construed by the Court authorized an investigation of "all lobbying activities." 345 U. S. at 44. The Court did not find that the term "activities" expands the scope of the word "lobbying" so as to include attempts to influence the passage or defeat of legislation indirectly.

The principles of the *Rumely* case are fully applicable here. Certainly, if a First Amendment question is raised by the compulsory disclosure of the name of a financial contributor to an activity involving the exercise of First Amendment rights, it is raised far more sharply by the requirement here that the petitioner reveal his political affiliations, as well as those of others. In the same way, if the resolution involved in the *Rumely* case, authorizing an investigation of "all lobbying activities," could not be construed to authorize an inquiry into attempts to influence public opinion in an organized way and in support of a particular viewpoint on matters subject to federal legislation, surely the term "propaganda activities" cannot be construed to authorize an investigation of the security measures employed by government agencies with respect to national officers of labor unions[296] or an inquisition into political affiliation.

Finally, the Court found it constitutionally necessary to restrict the language of the resolution in *Rumely* to exclude inquiry into indirect lobbying, despite the fact that the congressional power in this area has two independent sources, one legislative and the other the inherent power of Congress to investigate the conduct of its members, *In re Chapman*, 166 U. S. 661, and in the face of the further fact that disclosure is a familiar and well-recognized therapy in these areas. In this case, no such well-rooted power justifies the inquiry, for here the inquisitorial purpose aids neither the legislative nor the inherent powers of Congress; and far from being sanctioned by practice or usage, compulsory disclosure of political beliefs and affiliations is flatly in conflict with the First Amendment.

B. The specific inquiry involved here.

Apart from press releases and newspaper reports published prior to the hearings (*supra*, p. 9), petitioner had

[296] This justification for the inquiry was advanced at the trial (R. 157) and is discussed below.

no notice either prior to or at the time of the hearing concerning the nature and purpose of the particular inquiry for which his testimony was sought. At the hearing the sole justification advanced in support of the inquiry was "exposure" (*supra*, p. 7).

At the trial, the counsel for the committee testified that the "specific purpose" of calling petitioner was to develop "the practices and duties of various officials of the national organization of UE with the idea of determining whether or not there was a difference in practice, in certain government agencies, in screening or clearing officials of the Union for security purposes in plants where the Atomic Energy Commission, or the Army, Navy, and Air Force, were having secret government projects worked upon" (R. 157).

The hearing "was set up for [this] particular purpose" (R. 157). In addition to this "specific" and "particular" purpose, the hearing was claimed to constitute "part of an investigation which the committee had undertaken some months prior[297] * * * into the infiltration of Communist labor unions working on defense projects, from the standpoint of individuals who weren't actually working in the plant but who were officials of the union, as distinguished from those who had actual contact with classified material" (R. 157). The hearing "followed the reference" (R. 157) to the committee of the Wood Bill.[298]

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[297] This is an apparent reference to the hearings which gave rise to *Quinn* v. *United States*, *supra*. The issue of pertinency is developed at pp. 115-117 of the record in that case.

[298] H. Res. 3903, 81st Cong., 1st Sess. It provides in pertinent part:

Sec. 2. It shall be unlawful for any individual employed in connection with the performance of any national defense contract—

(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General;

(Footnote Continued on Page 150)

C. The First Amendment prevents compulsory disclosure of political affiliations.

As we have already shown, the right to engage in political activity is dependent upon the fundamental First Amendment rights of free speech, press and assembly. Certainly, it can no longer be denied, in view of this Court's decision in the *Rumely* case, that to force public disclosure of the exercise of these rights is to violate the Constitution. This Court has long recognized that the First Amendment would be made a nullity if it were applicable only to direct prohibitions or infringements.

> "It is not often in this country that we now meet with direct and candid efforts to stop speaking or publication as such. Modern inroads on these rights come from associating the speaking with some other factor which the state may regulate so as to bring the whole within official control." Jackson, J., concurring in *Thomas* v. *Collins*, *supra*, at 547.

In *Thomas* v. *Collins*, *supra*, a Texas statute required all labor organizers to register before soliciting members—giving name, union affiliations and credentials. Upon such registration the Secretary of State was required to issue an organizer's card. The Court held that, as applied to one who had made a speech to an assemblage of workers during which he invited his hearers generally to join a union, the

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(Footnote Continued from Page 149)

(2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or

(3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1) or (2) of this section.

Sec. 3. Whoever violates any provision of this Act shall be fined not more than $3,000, or imprisoned for not more than three years, or both.

statute was unconstitutional because its practical effect was to restrict the right to speak in favor of unionism. The state sought to defend the statute on the ground, among others, that the statute "is merely a previous identification requirement" (p. 538) since the Secretary of State could not refuse a card but had to issue it upon registration. The Court held, however, that such an identification requirement was a restriction upon freedom of speech and therefore unconstitutional.

In *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, this Court struck down the "released time" religious training program theretofore in effect in Illinois grade and junior high schools. One of the features of the state program, recognized by that decision to be destructive of free choice in the area of religion, was compelled public disclosure of minority opinion which exposed the children adhering thereto to social pressure by majority groups. In that case the school children were required once each week to separate themselves into groups to attend different classrooms, there to receive religious training from volunteer teachers appearing for various religious creeds. There was no state compulsion favoring attendance at any particular class and there was no affirmative discrimination against any creed, all being free to participate equally. However, those pupils not choosing to attend one or another of the religious classes afforded by participating creeds were required to assemble in yet another classroom to continue secular study. Thus, by process of compelled choice and elimination, the children of non-participating creeds together with children accepting no creed at all were made known to their fellows and were thereby exposed to social pressure and coercion tending to influence them to adopt conforming majority ideas. The Court observed that the state program rendered the religious creeds participating in the program "an invaluable aid in that it helps to provide pupils for their religious classes * * *." See 333 U. S. at 212. The program was held unconstitutional

as a violation of the neutrality required of the state in the area of religious thought.[299]

And this Court pointed out in *American Communications Association* v. *Douds, supra,* at 402:

> "* * * the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect 'discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes. A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature."

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[299] In his concurring opinion (at 227-228), Mr. Justice Frankfurter made this point particularly plain. He observed that the constitutional protection of religious freedom prohibits coercion, however subtly exercised, and that the Illinois program contained "powerful elements of inherent pressure," not removed by the treatment of all sects equally by the school authorities.

> "* * * That a child is offered an alternative may reduce his constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend. Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these non-participating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages."

See, also, *Grosjean* v. *American Press Co.*, 297 U. S. 233; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Jones* v. *Opelika*, 319 U. S. 103, adopting dissents in 316 U. S. 584, 600, 611, 623; *Meyer* v. *Nebraska*, 262 U. S. 390.

It can never be too often repeated that under the American constitutional system each constitutional right functions through forms appropriate to its nature and history. See *Gompers* v. *U. S.*, 233 U. S. 604, 610. "Liberty, in each of its phases, has its history and connotation * * *." Whether a particular form of state action violates "the essential attributes of that liberty" must be judged in the light of the nature of the liberty that is involved. *Near* v. *Minnesota*, 283 U. S. 697, 708; *Prince* v. *Massachusetts*, 321 U. S. 158, 164.

It is deeply rooted in the American constitutional system that groups which function through the exercise of civil rights must enjoy these rights free of compulsory disclosure. It would be a mockery to suggest that the sponsors of the First Amendment, fresh from a struggle against tyranny, intended to expose minority groups to the oppression which the state visits upon the dissenter. From the very beginning, the need for privacy in connection with political activity was recognized. Thus, Channing, in *IV A History of the United States* (New York, 1926), 224-225, states with respect to the political activities of Jefferson:

> "The secrecy with which Jefferson concealed his political motions makes it very difficult to say exactly what he did or did not do in any particular case. He was in the habit of gathering his political friends about him for confidential weekends at Monticello, selecting times when court was held at the neighboring county seat so that Madison, Monroe, and Wilson Cary Nicholas might have some ostensible reason for being in his neighborhood, other than visiting him. On one occasion he made Mrs. Madison the bearer of an invitation to her husband to come and confer with him and

> Nicholas and informed Madison that his wife did not know the object of the meeting. (Letter dated Monticello, Aug. 26, 1799.) Later he enclosed a draft of some paper to a correspondent reminding him that he had promised to copy it himself and not to let it be seen by anyone in the original, nor to permit the least idea to escape as to the 'quarter from which it comes.' At this time he was doubly cautious. He drew up a series of resolutions condemnatory of the Alien and Sedition laws and gave them to Nicholas in the expectation that they would be put forth by the North Carolina Assembly. In October, 1798, John Breckinridge was in Virginia and visited Nicholas. The latter gave him a copy of Jefferson's Resolutions and informed Jefferson that Breckinridge was confident 'the legislature of Kentucky (of which he was a member) will adopt them.' Nicholas added that Breckinridge was very anxious to pay his respects to Jefferson, but 'we both thought it best that he should not see you, as we believed if he did the resolutions would be attributed to you. I ventured to inform him that they came from you.'" (W. C. Nicholas to Jefferson, October 4, 1798.)

Similarly, it is stated in another work, Wilfred E. Binkley, *American Political Parties—Their Natural History* (New York, 1943), 67-68:

> "Our present party organization is the lineal discendant of the Revolutionary committees of correspondence * * * Late in Washington's first term * * * the superb Virginia politician (Thomas Jefferson) was busy with the courthouse cliques, organizing them on the familiar pattern of the revolutionists of the 1770's. With characteristic secrecy the sage of Monticello gathered Virginia leaders at his home whenever court brought them to the neighborhood and his purpose would therefore not be suspected."

See also VII *The Writings of Thomas Jefferson*, Ford. ed. (New York, London, 1896), 344.

Eugene P. Link in his authoritative study, *Democratic-Republican Societies, 1790-1800*, (New York, 1942) com-

menting on the Federalist charge that the popular clubs of the 1790's were secret, states: (115-116 note 63):

> "63. The societies' requirements for membership differed a little from place to place. The standard procedure was to have the support of two or three persons who were already members, to pay a small amount for dues, twenty-five or fifty cents, and to sign the principles as set forth in the constitution. Because of the opposition, some societies were forced to make their membership status more rigid. In Newark the Federalists came to the final meeting of the Republican Society in such numbers as to put through a vote to the effect that such a society was unnecessary and should not organize; (Wood's Newark Gazette, March 12, 1794). In New York the self-styled 'Friends of Good Order' set about to frustrate a meeting of democrats; see the Federalists' admission of such an attempt in Webb, Correspondence and Journals of Samuel B. Webb, pp. 197-98. It is hardly accurate to call the societies secret because they found it necessary to exclude enemies who sought to 'bore from within.' The Portland Republican Society, in the rough draft of its 'Republican Articles,' asks that no member reveal transactions that go on within the society. The final draft, however, which the members signed, did not contain this article (Portland Republican Society Papers). Washington's Neutrality Proclamation of 1793 made those societies which were concerned with Genet's projects in the Southwest more secretive about actions related to those plans. When by fiat the President outlawed their plans, they, too, were forced to carry on certain phases of their program secretly." [300]

It seems obvious that the Constitution would be converted into meaningless scrap of paper if its protections were denied to those groups who are forced to exercise their rights in private. Indeed, the government itself has recognized the vital importance of anonymity in the protection of the rights of labor, in a brief filed in this Supreme Court

[300] To the same effect, see, F. Byrdsall, "The History of the Locofoco or Equal Rights Party" (New York, 1842), p. 18.

by the Department of Justice in *Thomas* v. *Collins*, *supra*. In attacking the Texas registration statute referred to above, the Department of Justice made it clear that anonymity was basic to freedom of self-organization among workers. The following appears at pages 21 to 25 of that brief:

> "2. Interference with freedom of self-organization. (a) Anonymity. Whether the provisions of the state law interfere substantially with the right of self-organization is to be considered in the light of historical and recent experience, with which Congress has been fully familiar. It is widely recognized, and the cases before the Board show, that the participants in an organizational movement, particularly at the 'critical formative stage' (*Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. 2d 340, 349 (C. C. A. 8)), often take great pains to shield both the identity of the leaders and the fact that such a movement is in progress from the employer of the employees involved.[8] These precautions are taken, of course, to

[8] *Matter of Security Warehouse & Cold Storage Co.*, 35 N. L. R. B. 857, 877 ("Elaborate precautions had been taken by the Union to keep the membership campaign a closely guarded secret. The union organizers had issued instructions that no activities were to be carried on during working hours, no union buttons displayed, and no disclosure of the names of persons who had joined was to be made even to other employees who were joining"), enforced, 136 F. (2d) 829 (C. C. A. 9); *Matter of H. McLachlan & Co.*, 45 N. L. R. B. 1113, 1120-1121; *Matter of Revlon Products Co.*, 48 N. L. R. B. 1202, 1207-1208 ("In February 1941, the Union began secretly to organize the respondent's employees * * *. When these employees pointed out the failure of previous attempts to organize * * * it was decided to keep secret the identity of [those] participating in the organization activities"), enforced, July 20, 1944 (C. C. A. 2); *Matter of Century Projector Corp.*, 49 N. L. R. B. 636, 640 ("Shortly after being hired Morrison began attempts to organize the respondent's plant. He enlisted the cooperation of Persky, who in turn persuaded Decker to join with them in their effort. At first they attempted to conceal their union activities"), enforced, 141 F. (2d) 488 (C. C. A. 2); *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, 818 ("LaSalle was active in soliciting employees to join the Union; he did so secretively" * * *), enforced as modified, July 10, 1944 (App. D. C.); *Matter of National Container Corp.*, 57 N. L. R. B. No. 102 ("Solicitation of members proceeded quietly and secretively"); *Matter of Ohio Public Service Co.*, 52 N. L. R. B. 725, 735 ("Yingling and the others who were active in initiating the Union at the plant attempted to keep their activities from the attention of [the company officials]"), enforced, July 7, 1944 (C. C. A. 6); *Matter of Leland-Gifford Co.*, 48 N. L. R. B. 120, 125-126 ("For a period of more than a year [the employees] had been discussing the matter of 'getting the grinders together.' They had, however, exercised extreme caution in their conversations * * *. They were extremely careful as to whom they talked for fear of speaking to a 'stooge'").

avoid the possibility of reprisals by hostile employers and to secure an atmosphere in which the merits of self-organization can be considered by the employees free from restraining influences. The necessity of maintaining secrecy where it is suspected that the employer is hostile becomes evident by mere reference to the lengths to which such employers have gone to ascertain the identity of union representatives.[9]

"Interrogation and espionage are often the prelude to discrimination,[10] beatings and bloodshed.[11]

"Congress itself, in recognition that disclosure of the identity of union adherents endangers the free exercise of employee rights guaranteed in the Act, provided in Section 9(c) for the safe-guarding of anonymity by authorizing the Board to take a 'secret ballot' to determine whether a majority of the employees in a particular unit desire to be represented by a union."

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[9] [Footnote omitted.]

[10] [Footnote omitted.]

[11] [Footnote omitted.]

See also Coleman, *The Molly Maguire Riots* (Richmond, 1936), 3-4, 27.

If privacy is vital to the safeguarding of the organizational rights of workers, who can question the fact that it is indispensable to the protection of the political process. The Constitution does not deal with abstractions; it deals with realities, and a reality of the political process is that the group in power, unless restrained, seeks to eliminate opposition. If the right to engage in political activity is to be effectively protected against such attack, the exercise of that right requires freedom from compulsory disclosure.

The struggle which gave rise to the Fifth Amendment privilege against self-incrimination, upon which petitioner

also relied in resisting the committee's inquisition, likewise throws light on the content of the First Amendment.

To maintain its power seventeenth century English absolutism relied upon the Anglican establishment as upon political institutions. The Court of High Commission which was charged with the duty of eliminating heresy was permitted to become an all-powerful tribunal for enforcing political, as well as religious conformity.

The procedural device through which the Court of High Commission functioned was the oath *ex officio*. This procedure took the form of a secret inquisition in which the surmises, gossip and malice of neighbors and townsmen were used as a basis for interrogating the accused. See Lea, I *A History of the Inquisition of the Middle Ages* 407.

Compulsory disclosure of matters of political belief and political affiliation persisted in England and became the weapon of the Court of Star Chamber. It came to be increasingly used against all form of political and religious dissent.

The opposition to the use of the oath *ex officio* reached its climax in *Lilburn's Trial*, 3 How. St. Tr. 1315 (1637-1645). "Freeborn John" Lilburn refused to answer questions before the Star Chamber "concerning other men to ensnare me and to get further matter against me."

Although Lilburn was whipped and pilloried for his boldness in refusing to take "legal oath", his case led to the abolition of the Court of Star Chamber and to the statutory prohibition against compulsory disclosure in penal matters. So deeply did the revulsion against that entire procedure run that a few years later Lilburn's sentence was vacated and he was granted reparations for the punishment he had received.

One of the political demands made upon the Long Parliament was for some guaranty against compulsory testimonial self-disclosures. See "A Declaration" from *Sir Thos. Fairfax and His Counsel of War* (Pamphlet, 1647), and "The Humble Petition of Many Thousands" (3 Haller, *Tracts on Liberty in the Puritan Revolution 403*), quoted in Pittman, *The Colonial and Constitutional History of the Privilege Against Self-Incrimination*, 21 Va. L. Rev. 763.

The struggle against compulsory disclosure was deeply embedded in the factors which led to the early emigration to America. Not only was compulsory disclosure used to effect conformity, but it was also used to harass the dissenters who had determined to leave England. See Pittman, *loc. cit.*, 763 *et seq.*, and *United States* v. *St. Pierre*, 132 F. 2d 837, 842 (C. A. 2).

As early as 1641 the Massachusetts settlors wrote into their "Body of Liberties" a guaranty against compulsory testimony. See Whittmore, *Colonial Laws of Massachusetts*, 32-61 (Liberty No. 45).

The struggle against compulsory political disclosure in this country was merged in the struggle against the royal prerogative. Thus Pittman concludes:

> "The real reason for the American insistence that the privilege against self-incrimination be made a constitutional privilege may possibly be traced to the prerogative courts of Governor and Council, which constituted the supreme colonial courts, and the proceedings instituted to enforce the laws on trade in the colonies." *Loc. cit.*, 723.

The committee's resort to compulsory disclosure to ascertain the political affiliation of petitioner and his union associates is thus flatly contrary to the Constitution and

revives the very evils which it was the purpose of the First Amendment to eliminate.[301] Nor does it answer the profound constitutional questions raised here to point to the fact that questions concern membership in the Communist Party. It would be preposterous to argue that the standards of the Constitution need not be met in the case of an inquiry into membership or affiliation with the Communist Party. In *American Communications Association* v. *Douds, supra*, this Court recognized that the enforced disclosure of membership in the Communist Party could be justified only under the most narrowly restricted circumstances and that restraints upon the political activities of Communists through enforced disclosure must meet the standards of the First Amendment. No attempt was made to justify the disclosures demanded of petitioner by constitutional standards at the hearing at which he declined to answer questions with respect to political affiliations. As we have shown, the only purpose advanced at the hearing in justification of the committee's political inquisition was the purpose of exposure, a wholly uncon-

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[301] Of course, the compulsion to answer which the resolution exacts flows from the contempt sanctions of Section 192. Still, even in the absence of Section 192 a constitutional issue would be raised by a congressional inquiry into political affiliation. The mere fact that the witness must make a public choice between answering the question and declining to answer it, improperly burdens the exercise of the right of political expression (cf. *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203). The very fact of asking a witness today whether he is a member of an organization officially branded as subversive is to exert as discouraging an effect upon his freedom of choice and the freedom of others as, for example, the interrogation of an employer concerning the union affiliation of his employee. *International Ass'n of Machinists* v. *N. L. R. B.*, 311 U. S. 72, 78, 80. And the refusal to answer, even if such refusal is protected by the First Amendment, would establish the witness' "non-cooperation with a congressional committee," in itself, whatever its motivation, a potent basis for community condemnation. Such "non-cooperation" is a ground for discharge of a professor enjoying tenure from most American universities and of an employee from private employment. *New York Times*, December 10, 1953.

stitutional purpose. Nor did the government at the trial of the case attempt to introduce evidence to show that a clear and present danger of some serious substantive evil justified invasion of petitioner's constitutional right.

The Court cannot adopt the view that an inquiry into communism can ignore the Constitution. The record of the committee tragically demonstrates the fact that basic civil liberties protected by the Constitution are most widely violated under the justification of investigating communism. For the Court on this record to uphold the committee's power to force compulsory disclosures of the kind involved here would lend judicial sanction to the arbitrary power to conduct a continuing nation-wide inquisition into the political coloration of vast portions of the population falling under the committee's suspicion, from Bishop Oxnam to Robin Hood. It would validate the exposure system for use not only against the small group of organized Communists, but at the thousands whose political opposition to the administration in power makes them targets of the Communist smear and of the various forms of derived, associated and imputed guilt through which a political opposition is destroyed. The demand for an answer to the question, Are you now or have you ever been a member of the Communist Party?, is at the root of and is responsible for the committee's unconstitutional functioning. It is the committee's activities in pursuing this inquiry which have created "wide concern * * * over some aspects of the exercise of the congressional powers of investigation." [302]

D. At a minimum the Court is required to exclude from the scope of the resolution the authority to compel the disclosures involved here.

If the Court agrees with our contentions that the resolution's scope is indefinite and indefinable, it must be set

[302] *United States* v. *Rumely*, *supra*, at 44.

aside. If the Court disagrees, it must construe the resolution so as to exclude the authority to force the compulsory disclosure of the individual's political affiliations and associations.

Since the requirement that a witness make disclosures of the kind involved here conflicts with the First Amendment, *supra*, the Court must if possible and reasonable limit the resolution to avoid the conflict. *United States* v. *Rumely, supra; United States* v. *C. I. O.*, 335 U. S. 106; *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349, 355; *United States* v. *Orman, supra.* And the Court is under particularly heavy obligation thus to limit the resolution here. The Court should not, unless language compels it, sanction a construction of the resolution which would conflict with the law's protection against investigative invasion of personal and private rights and interests, especially where, as here, no legislative purpose dictates the necessity for such invasion.

As we have shown (*supra*, pp. 33-35), of all the operative terms of the resolution, the term "propaganda" is most free of ambiguity. An authorization that the committee investigate "propaganda", whatever its outer boundaries, is needlessly strained, when it is construed to give jurisdiction to the committee to center its activities not on propaganda but rather on the political coloration of individuals and organizations themselves divorced from a context of propaganda.[303]

The interrogation of petitioner in this case and of scores of others is not to identify them with propaganda but to expose them. Inquiry into propaganda has nothing what-

[303] A parallel to the situation presented here would be created if the Select Committee on Lobbying Activities had subpoenaed the "lady from Toledo" in the *Rumely* case and interrogated her not as to lobbying, direct or indirect, but as to her political affiliations and views solely because she had read or believed in the propaganda of the Committee on Constitutional Government.

soever to do with the questions asked them and the reasons why they are asked. It is, of course, true in a sense that every human being born alive is either the author of or the object of propaganda or of propaganda activities. But we are certain that not even the government will contend that this fact makes possible a construction of the resolution authorizing the committee to seek out, determine the guilt of and punish individuals and organizations.[304]

[304] The committee's departures from its basic jurisdiction are endemic. What portion of its resolution, for example, authorized it to subpoena former President Truman for the purpose of interrogating him concerning his alleged laxity in the White case? Was White a propagandist or was the former President a victim of propaganda activities?

The committee's disregard of its jurisdiction is not difficult to explain. A witchhunt cannot thrive on theological inquests into the supernatural, but needs witches. Investigations into propaganda are inadequate to create fear, nor are they politically lucrative. A subject matter such as propaganda is more or less finite and can be exhausted, but there are thousands of potential friendly and hostile witnesses. And it is far more repressive to attack individuals and organizations than propaganda, for such an all-embracing attack ensures the discrediting of a wide variety of reforms and movements for social change, as well as the most efficient intimidation of free expression.

It also must be remembered that the attack upon individuals is a convenient disguise for the committee's unconstitutional functions. The committee actually stresses that it is engaged in exposure in answer to criticisms that it is interfering with the exercise of constitutional rights. Thus when the committee is charged with investigating areas traditionally protected by the First Amendment from such investigation, it points out that it is not investigating the subject matter but merely "exposing" the individuals who function in that area. A recent example is the committee's investigation of the American clergy. When a widespread storm of protest resulted from the announcement of this proposed investigation, the chairman stated on behalf of the committee, "It was the sense of the committee that it is not to be inferred by anyone that this was an initiation of an investigation in the field of religion. It is in keeping with the committee's policy to investigate individual Communists or members of Communist front groups, wherever they might be found." *New York Times*, July 24, 1953.

Similarly when professional informers "named" various leaders of American religious life, including the Rev. John Haynes Holmes

(Footnote Continued on Page 164)

Certainly the jurisdiction of the committee cannot be enlarged because the resolution contains the phrase "propaganda activities." If the Court did not find in the comparable phrase "lobbying activities" support for the modest claims of the government in the *Rumely* case, how could that phrase serve the purpose here of changing the entire direction and emphasis of the resolution? The committee itself has on occasion wrestled with the limiting connotation of the key terms of its resolution. It has answered the problems which they pose only by ignoring or recasting them.[305]

(Footnote Continued from Page 163)

and Rabbis Judah L. Magnes and Stephen S. Wise. Congressman Clardy, acting chairman of the committee, stated that the committee was not investigating or attacking the clergy or religion, but was seeking to expose Communists "whether in the clergy, or [in the law] or any other group." *New York Times*, July 8, 1953; 5-8 *New York City Area* (1953).

[305] That we are sound in our view of the scope of the resolution is demonstrated by the committee's manipulation of its terms to justify departures from inquiry into prapaganda. The following are expressions by committee member Doyle:

> "* * * that law [Public Law 601] tells us to come to California and other cities all over the United States to make inquiry into subversive and un-American activities and communistic propaganda."
>
> 3 *Los Angeles Area* (1953), 680.
>
> "Mr. Doyle: Our duty is to uncover subversive activities, wherever they are.
>
> Miss Epstein: Propaganda activities.
>
> Mr. Doyle: The word 'propaganda' I think is not in the text.
>
> * * * * * *
>
> Mr. Doyle: I am directing your attention now to our direction that we investigate subversive activities.
>
> * * * * * *
>
> Mr. Doyle: * * * What I am calling your attention to is this: You would expect us to investigate, therefore, under Point 2 [Public Law 601], subversive activities, wherever we find them, wouldn't you?
>
> Miss Epstein: Subversive propaganda activities * * *.
>
> * * * * * *

(Footnote Continued on Page 165)

This Court cannot do either, for its duty is to construe language so as to protect constitutional rights. "With a view to observing this principle of wisdom and duty, the Court very recently strained words more than they need to be strained here." *United States* v. *Rumely*, *supra*, at 47. In this case the Court would be required to strain

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(Footnote Continued from Page 164)

Mr. Doyle: * * * We feel that the Communist Party * * * have been or are participating in subversive activities.

Miss Epstein: Propaganda.

Mr. Doyle: And propagandizing subversive activities. * * *

* * * * * * *

* * * we are asking about subversives wherever it exists.

* * * * * * *

Mr. Moulder: Do you have any knowledge concerning communistic or subversive activities whatsoever?

Miss Epstein: Are you talking about propaganda activities?

Mr. Moulder: Either one.

Miss Epstein: If you are talking about activities, I consider it outside of the scope of your inquiry. If you are talking about propaganda activities, I will stand on the Fifth Amendment. * * *"

3 *Los Angeles Professional Groups* (1953), 3926-3929.

"Mr. Doyle: * * * Under Public Law 601, the United States Congress by unanimous vote assigned each and every member of this committee * * * the obligation of investigating the extent and character and objects of subversive and un-American propaganda and activities in the United States.

* * * * * * *

Mr. Doyle: * * * You do not consider that because a man is a member of the bar he should not be questioned factually about subversive activities in the United States * * *?"

Ibid., 3937-3938.

"Mr. Doyle: * * * we are assigned to this sort of a hearing today in order to investigate the dissemination within the United States of anything that is subversive or un-American. * * * And our definite understanding is to investigate subversive and un-American conduct within our country. That is the law."

3 *Motion Picture Industry* (1951), 766.

See also: 2 *New York Area* (1953), 1254; 4 *Infiltration—Education* (1953), 1139; 2 *Los Angeles Area* (1953), 598; 3 *Infiltration—Education* (1953), 1006-1007, 1032 (at 1007, Congressman Doyle states, "I am using the exact language of Public Law 601" and defines it as "investigation of subversive activities").

words not for the purpose of avoiding a conflict with the Constitution but for the purpose of creating one.

Even if, *arguendo*, the resolution could conceivably be read to authorize disclosure of political affiliation under certain narrowly limited circumstances and in connection with a subject matter within its scope, the Court could not reject petitioner's claim to constitutional protection in this case. We have pointed out that at the committee hearing the sole justification advanced for the inquiry was the purpose of exposure. At the trial, the government claimed for the first time that the "specific purpose" of calling petitioner was to obtain information concerning the screening for security purposes of the Union's officials with a view to determining whether there was a difference in practice in this respect among various government agencies.

This purpose was alleged to be part of a continuing inquiry into the infiltration by Union officials into defense projects (R. 157). But this alleged inquiry is not even faintly related to the investigation of propaganda. Undoubtedly the remoteness of this subject matter from the area of propaganda, as well as the fact that no legislative purpose was claimed for the inquiry, led committee counsel to add that the hearing "followed the reference" to the committee of the Wood bill (see *supra*). Manifestly, mention of the Wood bill was imported into the statement of pertinency as a make-weight. It was conceded that petitioner's testimony was not specifically elicited to shed light on the Wood bill and the fact that the hearing "followed the reference" to the committee of the Wood bill did not supply a legislative purpose. Were it otherwise, any hearing, whatever its subject matter, held by the committee at any time subsequent to this reference would in the same way be sheltered by a protective umbrella of legislative purpose. Nor is it surprising that such faint claims were made for the pertinency of the inquiry to the Wood bill, for this bill was confined to barring from employment

in defense plants subversive individuals as broadly defined therein. See *supra*, note 298. The subject matter of the bill was thus divorced on the one hand from propaganda and on the other from labor unions or labor union officials.

In addition to all this, the Department of Justice at a subsequent hearing expressed its views that the bill was both unconstitutional and unnecessary.[306] And some of the

[306] Statement of Peyton Ford, the Assistant to the Attorney General of the United States:

"*March 21, 1950*

"HON. JOHN WOOD,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D. C.

"MY DEAR MR. CHAIRMAN: This is in response to your letter of March 2 and 9, 1950, requesting the views of this Department relative to H.R. 3903 [the Wood bill] and H.R. 7595, in connection with which your committee has scheduled hearings beginning March 21.

"H.R. 3903 would forbid any United States officer or employee or 'any individual employed in connection with' national defense contracts to be or become a member of or contribute funds or services to the Communist Party or any organization designated as subversive by the Attorney General, or to advise, counsel, or urge other such persons to do or omit to do any of these prescribed acts.

"An organization would be considered subversive under the bill if the Attorney General has designated it as such under Executive Order 9835 and there has been no publication of the cancellation of the designation or, following the enactment of the bill, when 31 days have elapsed following the publication of such a designation by the Attorney General. The Attorney General is directed to take such steps as are necessary to see that all persons covered by the bill are given a reasonable opportunity to learn the names of designated organizations.

"Under the definitions contained in the bill, the term 'organization' includes foreign as well as domestic organizations; 'to contribute funds or services' includes the contribution of personal services and the promise to make any contribution, whether the promise is legally enforceable or not; and 'national defense contract' includes any contract with the United States

(Footnote Continued on Page 168)

doubts raised against the bill were subsequently confirmed by this Court in *Wieman* v. *Updegraff*, 344 U. S. 183. To petitioner's constitutional right to decline compulsory

(Footnote Continued from Page 167)

or its agencies involving the manufacture of arms or munitions for national defense.

"A penalty section subjects violators to a $3,000 fine, 3 years imprisonment, or both.

* * * * * *

"In your committee's consideration of H.R. 3903, it would seem well to bear in mind that while the courts have sustained the right of the United States Government to employ such persons as it chooses and to prescribe qualifications and place appropriate conditions and restraints upon their employment (*Friedman* v. *Schwellenbach*, 159 F. 2d 22, cert. den. 330 U. S. 838), a different situation exists when it is sought to extend such restraints to private citizens generally as contemplated in section 2 of the bill. The limitations imposed by this bill, which have the effect of inflicting punishment upon named groups without jury trial, should, moreover, be carefully considered in the light of the decision in *United States* v. *Lovett* (328 U. S. 303), where the Supreme Court construed the constitutional prohibition against bills of attainder and stated that the 'permanent proscription from any opportunity to serve the Government is punishment, and of a most severe type' (p. 318). In this same connection, consideration should also be given to the fact that the bill contains no legislative finding that the activities proscribed present a clear and present danger to the security of the United States. In the absence of such a finding, it is doubtful that the bill would withstand a judicial test as to its constitutionality. Indeed, even were such a finding added to the bill, it is by no means certain that its constitutionality could be upheld.

"The important distinction between administrative measures to screen out disloyal employees or persons seeking employment in Government, such as are now utilized under Executive Order 9835, and legislation which would adopt, as in section 4 of the bill, such administrative designations for the purposes described in H.R. 3903, should also be carefully noted. A world of difference exists, from the standpoint of sound policy and constitutional validity, between making, as the bill would, membership in an organization designated by the Attorney Gen-

(Footnote Continued on Page 169)

disclosure there are thus opposed a resolution which does not authorize such disclosure, one investigative subject matter (screening trade union officials) which is both non-legislative and beyond the scope of the resolution and another subject matter (the Wood bill) which is beyond the scope of the resolution, not related to petitioner and unconstitutional. And dominantly motivating the entire hearing is a purpose, exposure, which is the battlecry of a new Inquisition poised to conquer the liberties of a nation.

(Footnote Continued from Page 168)

eral a felony, and recognizing such membership, as does the employee loyalty program under Executive Order 9835, as merely one piece of evidence pointing to possible disloyalty. The bill would brand the member of a listed organization a felon, no matter how innocent his membership; the loyalty program enables the member to respond to charges against him and to show, in a manner consistent with American concepts of justice and fairness, that his membership is innocent and does not reflect upon his loyalty.

"The activities of Federal employees attempted to be covered by the bill appear to be restricted adequately by section 9A of the Hatch Act (5 U. S. C. 118(j)) and by the loyalty program administered under Executive Order 9835. It is believed that the Department of Defense and the Atomic Energy Commission have also adopted certain precautionary measures covering activities of employees of those holding contracts connected with the national defense. In addition, the Smith Act (18 U. S. C. 2385) makes it a crime to advocate the overthrow of the Government of the United States by force or violence. It does not appear, therefore, necessary, even if constitutionally possible, to add to existing law and regulations at the present time a penal statute such as proposed in the bill. * * *"

* * * * * *

(*Hearings on legislation to outlaw certain un-American and Subversive Activities* (1950), 2123-2125.

POINT IV

Petitioner validly asserted the privilege against self-incrimination under the Fifth Amendment.

At the outset it should be noted that no challenge is made by the government to the availability of the privilege against self-incrimination in response to any and all of the questions which petitioner declined to answer. Indeed, the very fact that the purpose of the inquiry was "exposure" of communism in itself made appropriate the assertion of the privilege. Compare *Blau* v. *United States*, 340 U. S. 159.

A. Petitioner made a specific assertion of the privilege.

At the very first indication on the part of the committee that the witness' answers might involve association with specific individuals charged with being Communists, petitioner asserted and claimed his privilege under the Fifth Amendment. Thus the witness specifically stated (R. 168):

> "Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the First Amendment supplemented by the Fifth. This committee will corrupt those rights."

He explained to the committee (R. 167) that the line of questioning that "counsel is developing now * * * has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the Union, its leadership and its members."

The court below based its ruling (R. 356) that the privilege had not been asserted upon this preliminary response alone. We submit that this response is sufficient to assert the privilege.

However, petitioner did not confine his response to the answers quoted above. He made it explicit when the committee continued to press him that the reasons for his refusal were based upon his fear that an attempt was being made, as press reports had predicted, to elicit information to be used in a criminal prosecution against him (R. 171):

> "Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal and for the purpose of trying to frame people for possible criminal prosecution."

This claim of protection under the Fifth Amendment based upon a fear of a "possible criminal prosecution" was again repeated when counsel for the committee in accordance with the committee's announced purpose of investigating the validity of the affidavit which petitioner had submitted under the Taft-Hartly Act pressed the witness on this subject. He stated (R. 194): "I further understand what the motives of this committee are, to establish a beautiful frame to hang people who try to comply with the law."

Throughout the entire course of the questioning petitioner consistently referred back to his original claim of protection under the Fifth Amendment. When petitioner responded with, "I answered that", at one point when an incriminating question was put to him, Congressman Moulder said: "You mean you refuse to answer for the same reasons you gave at the beginning." The defendant replied: "That is correct. I answered the best way I know how" (R. 194).

Thus the witness' entire testimony from beginning to end is unified by a claim of protection under the Fifth Amendment based upon the stated fear that his answers might be used against him in a "possible criminal prosecution."

This is a criminal case and presumption of innocence entitles petitioner to the protection of every reasonable doubt. More than this, the courts have from the beginning looked with disfavor upon attempts to narrow the privilege and have insisted that it be given a broad construction consistent with its fundamental purpose.

The recent decisions of the Court in (*Patricia*) *Blau* v. *United States*, 340 U. S. 159, (*Irving*) *Blau* v. *United States*, 340 U. S. 332, and *Hoffman* v. *United States*, 341 U. S. 479, underscore the fundamental importance which attaches to the privilege against self-incrimination under our constitutional system.

In the *Hoffman* case, *supra*, the Court stated (at 486):

> "This provision of the Amendment must be accorded liberal construction in favor of the right it was intended to secure." [307]

The Court quoted with approval from *United States* v. *White*, 322 U. S. 694, 698:

> "The immediate and potential evils of compulsory self-disclosure transcend any difficulties that the exercise of the privilege may impose on society in the detection and prosecution of crime."

In *Feldman* v. *United States*, 322 U. S. 487, 489, it was pointed out that this guarantee against testimonial compulsion "was added to the original Constitution in the conviction that too high a price may be paid even for the unhampered enforcement of the criminal law and that, in its attainment, other social objects of a free society should not be sacrificed."

In *Twining* v. *New Jersey*, 211 U. S. 78, 91, Justice Moody reminded the nation of the importance of the privilege in the following terms:

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[307] To the same effect is *Counselman* v. *Hitchcock*, 142 U. S. 547, 562, and *Arndstein* v. *McCarthy*, 254 U. S. 71, 72-73.

> "At the time of the formation of the Union the principle that no person could be compelled to be a witness against himself had become embodied in the common law and distinguished it from all other systems of jurisprudence. It was generally regarded then, as now, as a privilege of great value, a protection to the innocent, though a shelter to the guilty, and a safeguard against heedless, unfounded or tyrannical prosecutions."

The privilege against self-incrimination was designed to bear an important part of the constitutional burden of making the democratic system work. As Justice Bradley pointed out in *Boyd* v. *United States*, 116 U. S. 616, 630—"a case that will be remembered as long as civil liberty lives in the United States" (Brandeis, J., in *Olmstead* v. *United States*, 277 U. S. 438, 474)—compulsory disclosure "is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom."[308]

The court below rested its opinion upon the view that petitioner's use of the phrase "the First Amendment supplemented by the Fifth" did not "draw about him the pro-

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[308] In *Wood* v. *United States*, 128 F. 2d 265, 268, 278, 279 (C. A. D. C.), Mr. Justice Rutledge, while a judge of the court below, recognized the fundamental importance of the privilege to democratic government:

> "The privilege has sanction in the Bill of Rights, and before that in a long but victorious struggle of the common law. It protects against the force of the court itself. It guards against the ancient abuse of judicial inquisition. Before it judicial power, including contempt, to enforce the usual duty to testify, dissolves. No other violence or duress is needed to bring it into play than the asking of a question. It excludes response regardless of its probative value."

The court thus rebuked those who would seek to minimize and limit the importance of the constitutional privilege:

> "Men now in concentration camps could speak to the value of such a privilege if it were or had been theirs. There is in it the wisdom of centuries if not that of decades."

tecting mantle of the Fifth Amendment" (R. 356). Such a view is incomprehensible when one considers the purpose and background of the inquiry and the peril in which the committee knowingly placed the witness. Indeed, when we note that the witness expressly stated that he feared "a possible criminal prosecution," a portion of the record which the court below wholly ignored, the contention that an assertion was not made is impossible to accept.

While the court below recognized the need for a liberal construction in this area, it withheld such a construction here, pointing to the fact that the *Hoffman* case, *supra*, did not deal with an assertion (R. 357). But the liberal principles which govern the construction and application of the privilege insist than an assertion of the privilege does not require a particular form of words or the pronouncement of some talismanic formula. It is sufficient, however informal it may be, if it reasonably conveys that the witness is unwilling to answer because he may be incriminated. Indeed, "it may even be assumed in the absence of express assertion in some cases from the nature of the questions asked and the manner in which they are answered." *United States* v. *Skinner*, 218 F. 870, 880. See also *United States* v. *Elton*, 222 F. 428 (S. D. N. Y.) and *United States* v. *Eisele*, 52 F. Supp. 105 (D. C. D. C.).

Surely, of all the aspects of the privilege, the question whether it was validly exercised most requires liberality in construction. And we know of no situation which raises a stronger claim to the protection of the privilege than one in which a witness who has never been duly charged resists inquiry in the course of a preliminary investigation because of the fear of harassment and unfounded prosecution.[309]

[309] See 8 Wigmore, *Evidence*, Section 2251, 308: "The modern system of formal presentment needs no defense. In this aspect, the privilege against self-crimination is, in history and in policy, its just complement, insofar as it exempts all persons from being compelled to disclose their supposed offenses before formal process of charge is had."

Because the incriminating area embraced petitioner's political affiliation it is not surprising that he referred not only to the Fifth Amendment but to the First Amendment. But the fact that the witness also referred to the First Amendment does not operate to deprive him of the protection of the Fifth. As we have pointed out, there is a close relationship between the reasons which brought the privilege into being and the nature of the rights protected by the First Amendment. *Supra*, pp. 158-159.

If the incriminating subject matter constituted an ordinary offense such as gambling or the sale of narcotics, the protective policies of the Fifth Amendment would require a liberal construction. The incriminating subject matter in this case involves political beliefs and affiliations. The very reason for the existence of the privilege is embedded in the need for sheltering political minorities. In short, a court must construe the assertion of the privilege *more*, not less liberally, as did the court below, where as here, the incriminating subject matter trenches upon the area of political belief and affiliation.

Apart from the fact that reliance on the First Amendment is in no way inconsistent with the plea of the privilege under the Fifth Amendment, the law is clear that the reliance upon reasons in addition to possible self-incrimination cannot serve to dissolve the protection of the Fifth Amendment. In *United States* v. *St. Pierre*, 128 F. 2d 979 (C. A. 2), the leading case on this question, a witness, when asked why he refused to answer a given question stated, "it was 95 percent fear of revenge and 5 percent fear of self-incrimination." The Court of Appeals held (at 980):

> "It is immaterial that appellant's chief reason for refusing to answer was his fear of foul play. The fact that he thought himself in greater danger from the man whose name he was asked to disclose than from prosecution for crime, did not deprive him of his privilege, if any, though, it may have made him firmly determined to claim them."

This ruling was cited approvingly by the Court in *Smith* v. *United States*, 337 U. S. 137, 151.

In a number of companion cases involving officers or members of the Union, trial courts have ruled that reliance upon comparable expressions constituted valid assertions of the privilege against self-incrimination. One such case is *United States* v. *Fitzpatrick*, Criminal No. 1743-1950, 96 F. Supp. 491, involving Thomas J. Fitzpatrick, the chief steward of Local 601 of the Union. Mr. Fitzpatrick appeared before the committee (see petition in *Quinn* v. *United States, supra*), and after preliminary matters had been disposed of, stated his position in advance with respect to questions which the committee thereafter might ask: [310]

> "I will answer all honest questions put to me, but I have no intention of joining with the people who seek to destroy the Constitution of this country, whether witnesses or anybody else. To me, the Constitution of this country is not a scrap of paper. It is something to be maintained. I have two sons. I want them to have the same freedoms and rights that I have enjoyed. If I can't leave this world a better world, I want to leave it just as good.
>
> "The Constitution of this country provides certain protection for minorities and gives the privilege for people to speak and think as they felt that they should and want to. It also gives the privilege that people can have opinions or beliefs that may be unpopular. In my opinion, it gives them the right to hold those opinions secret, if they so desire. This is a protection of the First Amendment to the Constitution, supplemented by the Fifth Amendment."

[310] 1 *Labor Unions* (1949) 602. For the convenience of the Court we appended two supplements to our petition for a writ of certiorari this case. We make reference to them here. Supplement I is a series of unreported opinions involving the privilege against self-incrimination which were handed down by the District Court in a number of companion cases. Supplement II reproduces parallel testimony of union officers before the committee. Relevant portions of the remainder of the Fitzpatrick testimony are set forth in Supplement II at p. 29.

In his opinion in the *Fitzpatrick* case, *supra*, Judge Morris refused to permit the fact that the witness relied upon considerations in addition to those arising out of the Fifth Amendment to cancel the claim of privilege. He stated that " * * * this misapprehension [with respect to the applicability of the First Amendment] on the part of the defendant in no way vitiates his right to the protection under the Fifth Amendment if he sufficiently made such claims". The court ruled (at 493):

> "The Fifth Amendment to the Constitution provides, among other things, that 'no person * * * shall be compelled in any criminal case to be a witness against himself * * *.' The other provisions of that Amendment obviously have no relation to this controversy, and the provision mentioned is the one that has been construed to justify a witness in any proceeding in declining to answer any question that would tend to incriminate him, or expose him to prosecution for the crime. There can be no doubt that this protection extends to a witness testifying before any judicial, congressional or administrative body of the United States Government although, apparently, there has been misapprehension on the part of some that it does not. The use, therefore, by the defendant of the term 'Fifth Amendment' could only have reference to this provision therein, and unless by some explicit statement that he was not claiming the protection of that provision of the Constitution, it would seem sufficient to put the committee on notice that he was asserting such claim."

Judge Morris insisted (at 494) that the manner of the assertion cannot be divorced from the objective circumstances:

> "Where a witness, such as the defendant here, has claimed the protection of the Fifth Amendment and that in a setting in which he has been denounced, by other witnesses testifying, as a Communist, where testimony by other witnesses, if believed, shows that he has been active in organizing and directing a Communist organization, where the statutes then in force

> mak[illegible] it a criminal offense to do such things, and where prosecutions have been instituted against those who are charged with doing them, it seems to me to be clear that the committee was put on ample notice that the defendant apprehended that the answers to the questions involved in this indictment would furnish information which could be used in the prosecution of him in a criminal case under existing federal statutes, and for that reason, as well as for other reasons which were not well founded, declined to answer the questions. *Blau* v. *United States*, 340 U. S. 159."

The circumstances which the court thus described as conveying reasonable notice that Fitzpatrick, a shop steward of a local union of the UE, claimed the privilege apply even more appositely to the situation of petitioner, the Secretary-Treasurer of the International Union, in view of the fact that the committee expressly sought to probe his affidavit under the Taft-Hartley Act.

In *U. S.* v. *Panzino*, Criminal No. 1747-1950, Supplement I, p. i, Judge Goldsborough ruled that a similar formulation constituted an effective assertion of the privilege against self incrimination. Likewise in *U. S.* v. *Matles*, Criminal No. 1745-50, Supp. I, p. 11, Judge Letts who was the trial judge in the instant case found reliance upon the First and Fifth Amendments to constitute a valid assertion of the privilege against self-incrimination.[311]

[311] The court reached this conclusion by probing "the mental operations of Representative Moulder". Judge Letts stated that the primary question was whether Representative Moulder understood the defendant's reference to the Fifth Amendment and further whether such reference adequately conveyed to the Representative that the defendant was invoking his constitutional privilege against self-incrimination. In order to justify the acquittal in the *Matles* case, in the face of the conviction here, Judge Letts ruled that, though the language used by the witness was inadequate to convey an assertion, Representative Moulder nevertheless managed to grasp that an assertion had been made. In reaching this conclusion, Judge Letts pointed to the fact Representative Moulder, upon being told that the witness relied on the First and Fifth Amendments (Supplement I, p. 13),

(Footnote Continued on Page 179)

B. Petitioner did not abandon, waive or disclaim the privilege.

When the questioning of petitioner turned to the identification of particular individuals, the witness refused to answer upon the ground which we have already discussed. The committee then continued to press the witness with questions along the same line. The witness, thus pressed, reasserted the privilege and voiced his fear, as press reports had indicated, that the committee was seeking to incriminate him on the basis of the Section 9(h) affidavit of the Taft-Hartley Act. After he thus gave a clarification of the reasons for his refusal to answer, Repre-

(Footnote Continued from Page 178)

"then inquired 'In what respects do they justify your refusal to answer the question'. And the defendant replied: 'I am so advised by counsel.' At this point Mr. Scribner, counsel for the defendant, who was present, volunteered: 'I will be happy to give the basis for that if you wish, Mr. Congressman'."

The court concluded upon the basis of the above colloquy that since "the suggestion of defendant's counsel was not adopted and he was not invited to explain further the position of the defendant in relying upon the First and Fifth Amendments", therefore, "Representative Moulder understood the position of the defendant and the purpose of the objections that had been made."

But this is the same Representative who only a little while earlier had heard petitioner, the witness immediately preceding Matles, use almost the same language to claim the privilege. If he was aware that the words "First and Fifth Amendments" constituted an assertion, he must have had a similar awareness when the witness Emspak used the expression "the First Amendment supplemented by the Fifth."

The inescapable fact is that the words which the witness Matles used, in the context of the objective circumstances, were adequate to convey the assertion and that similar words and circumstances require the same conclusion here. There is no basis whatsoever for attributing to Representative Moulder a comprehension of what was being claimed in the *Matles* case and an ignorance of what was being claimed in the instant case. Indeed the record in this case contains a more explicit indication than is presented by the *Matles* record, that Representative Moulder knew that the witness had claimed his privilege. See R. 191.

sentative Moulder persisted in exploring the validity of the affidavit and in seeking an explanation for an answer which on its face expressed the fear of criminal prosecution. He asked the witness (R. 172):

> "Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?"

The witness answered: "No." However, he was not permitted to complete his answer and was again pressed to incriminate himself by identifying particular individuals.

Representative Moulder then again asked (R. 172):

> "Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?"

The witness thereupon replied (R. 172):

> "No. I don't think this committee has a right to pry into my associations. That is my own position."

The court below gave conclusive effect to this last answer as a disclaimer of the privilege (R. 357).

But the court could not attribute to this answer a significance which dominates and indeed overrides the remainder of the witness' testimony and its context. As we have noted, Judge Kirkland had ruled that all of the questions addressed to the petitioner were parts of a single line of inquiry. *Supra*, p. 10. If the questions addressed to petitioner cannot be considered in isolation from the entire inquiry, neither may the answers. Since all of the questions considered together establish the availability of the privilege in response to a particular question,[312] the an-

[312] Compare *Bowers* v. *United States*, 202 F. 2d 447, 452 (C. A. D. C.): "We seriously doubt whether the 'Do-you-know-a-certain-person' question, without more, can ever be said to be pertinent for the purposes of a criminal prosecution under § 192."

swers to all of the questions constituting the entire line of inquiry must likewise be considered together to determine whether the privilege was in fact claimed.

An examination of the entire line of inquiry establishes that petitioner intended to assert the privilege and that he in fact asserted the privilege. Thus, when the witness asserted his privilege in response to an incriminating question with respect to Joseph Persily, he was asked precisely the same kind of question with respect to another Union organizer, Albert Smith (R. 170). Although the witness referred back to his earlier answer in declining to answer the question concerning Albert Smith, he was nevertheless asked whether Max Helford had ever been connected with the UE as a field organizer (R. 171). It was in response to this third attempt to incriminate him that the witness made explicit the basis for his claim of privilege, namely, the fear of criminal prosecution for perjury (R. 171).

When the pattern of the questioning revealed that petitioner was being asked to identify individuals who had been accused by the committee of being Communists, he charged that all of the questions which had been put by the chairman were motivated by the Committee's purpose to identify individuals as Communists for possible criminal prosecution under the affidavit provisions of the Taft-Hartley Act. He suggested that the questions bore out the press reports which have already been referred to and which announced that such would be the purpose of the interrogation. He stated his refusal to permit himself thus to be victimized (R. 171): "I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up."

Although petitioner thus expressly stated the basis for his claim of privilege and of his fear, Representative Moulder persisted in arguing with petitioner in an obvious

attempt to force out of him the incriminating information which the committee sought. It was in response to this attempt to probe further into the basis for the claim that the witness gave a negative reply upon which the government relies.

Before the petitioner left the stand, Representative Moulder stated to him (R. 191) that he had not been denied any constitutional rights or privileges and that he had not been "accused of anything". Representative Moulder thus sought to reassure the witness that his fears were groundless and that his constitutional rights to be free of self-incrimination had not been invaded. The committee thus patently recognized that petitioner had asserted the privilege and that he had not abandoned it, for if the committee was under the impression that the witness had not relied upon the privilege it would hardly have become necessary to tell him that he had not been accused of anything.

A significant colloquy terminated the line of inquiry. The witness was bluntly asked whether he had recently signed a non-Communist affidavit with the NLRB, and was thereafter asked whether he was a member of the Communist Party. In response to this apparent attempt to lay the basis for a perjury charge against the witness, petitioner communicated in unmistakable language his fear that the inquiry was designed to lay the basis for a perjury prosecution (R. 192-193).

Despite this clearly communicated expression of fear, the committee, pursuing its earlier tactics of attempting to wring admissions from petitioner's assertion of the privilege, nevertheless asked him whether he was a member of the Communist Party at any time before he signed the affidavit, whether he ever paid Communist Party dues, whether he ever signed an application to join the Communist Party, whether he ever registered as a member of

the Communist Party, and whether he ever attended the trial of Earl Browder at the Communist Party headquarters in New York City. To all of these questions the witness simply replied: "I answered that." When the committee asked: "You mean you refuse to answer for the same reasons you gave at the beginning?" petitioner replied: "That is correct. I answered the best way I know how" (R. 194). Thus, petitioner concluded his examination with a reliance upon the same assertion which he made when the committee first touched upon the incriminating subject-matter.

The record, which must be taken into account in its entirety, thus defeats the government's contention. It is simply impossible to contend that the petitioner's answer to a single question which considered in isolation lacks pertinency, overcomes and destroys the meaning of his asserted fear of prosecution made when the ultimate facts—which alone could give the initial questions pertinency—were sought to be elicited. It was in his response to these key and controlling questions, incriminating on their face, that petitioner expressed his fear of criminal prosecution and referred back to his initial reliance upon his Fifth Amendment privilege.

In addition, the committee had no right to put the questions once the privilege had been validly claimed. A claim of privilege cannot be frustrated or retroactively destroyed by converting the inquiry into an endurance contest. Once the setting of peril appears, the claim must be respected and cannot serve as an invitation to circumvent it by guile or persistence. Nor is a prosecutor free, after an assertion is made, to probe the reasons underlying the assertion. For answers to such questions *pro tanto* leads to a sacrifice of the privilege. See *Hoffman* v. *United States*, *supra*; *United States* v. *Weisman*, 111 F. 2d 260 (C. A. 2), and *Hashmall* v. *United States*, Supp. I, 25. This Court cannot

sanction an attempt to invade the privilege in order to justify an attack upon its assertion.

Apart from all of the above considerations, the answer in issue cannot serve to negate the claim. It might well have been true that acquaintance with the two named individuals would not have directly subjected the defendant to criminal prosecution. The Fifth Amendment protection is, of course, more extensive. As the Court stated in *Blau* v. *United States, supra:*

> "Whether such admissions by themselves would support a conviction under a criminal statute is immaterial."

As long as "answers to the questions asked * * * would have furnished a link in a chain of evidence needed in a prosecution of petitioner," the Fifth Amendment protection was available to petitioner. *Blau* v. *United States, supra.* And the answer is equally consistent with the fear of a "frameup" of an unfounded prosecution which petitioner voiced both before and after the colloquy in issue.

The case law dealing specifically with comparable claims with respect to insufficiency, absence or waiver of assertion condemns the government's contention here. In *U. S.* v. *Eisele*, 52 F. Supp. 105 (D. C. D. C.), involving a claim of immunity under a statute, the prosecution denied that the defendant had in fact claimed his privilege, and in addition alleged that "whatever claim was asserted it was subsequently withdrawn." The contentions advanced were thus identical with those urged here. Judge Pine rejected these arguments and upheld the defendant's assertion.

This Court has erected safeguards restricting the constant attempts of government prosecutors to evade prohibitions of the Fifth Amendment by seeking to spell out of a defendant's conduct a "waiver" or "withdrawal" of the privilege. The Court has insisted that there can be no waiver of the claim of Fifth Amendment protection by a

witness unless through his testimony in that proceeding the witness' voluntary testimony constitutes an admission or showing of guilt. *Arndstein* v. *McCarthy*, 254 U. S. 71, and *McCarthy* v. *Arndstein*, 262 U. S. 355. See, also, *Smith* v. *United States*, 337 U. S. 137; *Rogers* v. *United States*, 340 U. S. 367; *United States* v. *St. Pierre*, 132 F. 2d 837 (C. A. 2). The courts must "indulge every reasonable presumption against waiver of fundamental constitutional rights," *Johnson* v. *Zerbst*, 304 U. S. 458, and may not "presume acquiescence in the loss of fundamental right," *Glasser* v. *United States*, 315 U. S. 60. In the latter case the Court held (at p. 70):

> "To preserve the protection of the Bill of Rights for hard-pressed defendants we indulge every reasonable presumption against the waiver of fundamental rights."

In respect specifically to an alleged waiver of the Fifth Amendment protection against self-incrimination, the Court ruled in *Smith* v. *United States*, 337 U. S. 137, 150:

> "Waiver of constitutional rights * * * is not lightly to be inferred. A witness cannot properly be held after claim to have waived his privilege and consequent immunity upon vague and uncertain evidence."

In that case the petitioner appearing before an OPA examiner asserted his general claim of protection under the Fifth Amendment and asked for immunity under the applicable immunity statute. During the course of the examination the petitioner made certain statements in an answer. The record then read:

> "Question: This is a voluntary statement. You do not claim immunity with respect to that statement?
> "Answer: No."

Mr. Justice Reed said:

> "In view of the specific claim of privilege, it seems unlikely that petitioner would waive the privilege

and testify * * *. No question is made as to the correctness of the transcription. Without any effort to clarify the 'no', the examiner went ahead and * * * the subsequent answers were considered by the examiner to be voluntary. *We do not think under these circumstances this equivocal 'no' is a waiver of the previous definite claim of general privilege against self-incrimination.*" (Emphasis supplied.)

In *United States* v. *St. Pierre*, 128 F. 2d 979 (C. A. 2), the defendant had answered in response to questions by the United States Attorney that "his answer would give the United States Attorney no clues or leads to his commission of a Federal crime." The holding of the court on this point which was cited approvingly by Mr. Justice Reed in the *Smith* case, was (at p. 980):

> "Nor is it material that appellant stated at several points that he had committed no federal crime; such a contradiction, especially by a nervous or excitable witness would not overcome a clear claim of privilege if he was otherwise entitled to the privilege."

See also *McCarthy* v. *Arndstein*, *supra*.

In *United States* v. *Weisman*, *supra*, a witness who had appeared before a grand jury, asserted his Fifth Amendment protection, but then answered certain of the questions which he had previously refused to answer on constitutional grounds. Judge Learned Hand, in reversing the conviction, stated:

> "These answers the prosecution urges as an abandonment of the privilege; but we agree with the defendant that they were slips and not really intended as an abandonment."

In *Wood* v. *United States*, *supra*, Justice Rutledge wrote in respect to a supposed "waiver" of the Fifth Amendment protection by defendant,

> "Basic constitutional protection, especially, in criminal cases, should not be suspended by mere inference

from indifferent facts or doubtful presumptions, whether of law or fact."

In the light of the foregoing principles, it is impossible to read a disclaimer, abandonment or waiver of the privilege by petitioner in the present proceeding out of his single answer to one question in the course of the entire proceeding.

POINT V

Issues arising out of the failure of the committee to direct petitioner to answer the questions involved here.

A. Petitioner was not directed to answer the questions put to him.

Even if petitioner had no right to refuse to answer the questions listed in the indictment on his Fifth Amendment ground, he could not be convicted for refusing to answer the questions.

The record shows that petitioner was not directed to answer any questions after he made his Fifth Amendment claim. At no time did Representative Moulder or Committee Counsel Tavenner direct petitioner to answer either upon the ground that the refusal was not considered constitutionally privileged or upon the ground that the privilege had not been properly asserted, or that the First Amendment did not support his objections. If in the view of the committee the privilege was not available to the witness or the assertion had not been satisfactorily made, or his objections were not protected by the First Amendment it was required to direct the witness to answer. It is the disobedience of the direction to answer which forms the basis of the contempt, and in the absence of a direction the initial refusal is not a matured, punishable refusal since there is no basis for the indispensable finding of intent

to violate the statute. Compare *Quinn* v. *United States*, *supra*.

There are a large number of circumstances under which the mere failure to answer a question put by a congressional committee is not in itself a sufficient basis for invoking the criminal law. It would serve no purpose exhaustively to analyze all of these circumstances here. It is sufficient to state that one of these circumstances comes into being when a witness raises serious objections to answering.[313] A majority of the court below recognized—and this wholly apart from whether petitioner asserted the Fifth Amendment privilege—that petitioner's objections were of an order which required some dispositive action by the committee before he could be held in violation of the criminal law.

The classic manner in which congressional committees reject the objections of a witness has been by specifically directing the witness to answer. When in 1857 Congress enacted the contempt statute to supplement its inherent powers the practice had been either explicitly to direct the witness to answer or to inform him in comparably clear terms that a refusal would result in contempt proceedings. Section 192 of Title 2 of the Criminal Code punishes every person who "refuses to answer". The legislative history of Section 192 establishes that in passing the statute Congress did not intend to confer new powers upon congressional committees or inflict any additional burdens on witnesses. See the concurring opinion of Judge Bazelon in *Quinn* v. *United States*, *supra*, at 33-34; *supra*, note 294. Therefore, the term "refusal" must be construed to contain within it the prerequisite of a direction or an explicit warning that contempt might ensue in the event of a failure to answer the question.

[313] Compare *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, and *Bowers* v. *United States*, *supra*.

In three district court cases, the court has assumed that a direction to answer or its equivalent is a prerequisite to contempt. In *United States* v. *Browder*, D. C. D. C., Criminal No. 1784-50 (March 14, 1951), the court, in acquitting the defendant of contempt of Congress, said:

> "A search of the record will not disclose one instance when the committee or its presiding member overruled the defendant's objections (based on pertinency) or offered to set him right if, perchance, his observations were ill founded or his position untenable in the eyes of the committee.
>
> "His objections were not acted upon and he had the right to believe that his views and explanations were acceptable to the Committee."

This view was followed in *United States* v. *Fox*, D. C. D. C., Criminal No. 1798-50 (June 29, 1951), where the court observed that "there is no reason why a different procedure (from that pursued in the courts) should be permissible in cases involving contempt of Congress."

And again in *United States* v. *Kamp*, 102 F. Supp. 757 (D. C. D. C. 1952), the court declared:

> "Committees of Congress must conduct examinations in such a manner that it is clear to the witness that the committee recognizes him as being in default * * *. The witness is not required to enter into a guessing game when called upon to appear before a committee. The burden is upon the presiding member to make clear the directions of the committee, to consider any reasonable explanations given by the witness, and then to rule on the witness' response."

See also *Bryan* v. *United States*, 339 U. S. 323.

Perhaps the most compelling indication that the congressional committees translate their obligation to overrule objections to questions into a direction to answer is the current practice of the committees themselves. Thus the Senate Judiciary Committee and the House Un-Amer-

ican Activities Committee now follow this practice."[11] The ruling of the court below will inevitably invite an abandonment of this practice.

We do not insist that the word "direct" must necessarily appear in the requirement that the witness answer—other terms may serve the same purpose. But we do contend that the direction must be clear and explicit. Such a requirement is not unreasonable in view of the fact that congressional committees have already adopted this formula in giving effect to the direction requirement. That a lesser standard fails adequately to protect the witness is demonstrated by the decision of the court below.

B. The record does not sustain the conclusions of the court below on the "direction" issue.

We believe that the court below was required to reverse the conviction because the committee did not explicitly communicate to the petitioner that he was required to answer. The substituted standard of the court below (R. 361) that it must appear that petitioner was apprised that his questioner rejects his objections and intends that he answer, fails adequately to protect the witness. As we have shown (*supra*, pp. 141-143) when the witness is called to the stand in a proceeding of this kind, he needs the assurance of the most explicit standards to protect him against the invasion of his rights under the Constitution. The requirement that the direction be explicitly communicated at least gives the witness some simple, recognizable formula whereby he can determine whether to answer or stand on his rights.

That the standard which the court applied is a standard in name only is apparent from the manner in which it was administered (R. 356). The concurring opinion simply states that petitioner "was made aware" that the committee

[11] *Hearings Before the Sub-Committee to Investigate the Administration of the Internal Security Act and other Internal Security Laws* of the Committee on the Judiciary, U. S. Senate, 82nd Cong., 1st Sess. (1951), 75-76 and the concurring opinion of Judge Bazelon on the *Quinn* case, *supra*, at 35 and *supra*, note 111.

desired his answers despite the grounds advanced for refusing (R. 361). But no evidence at all was offered in support of this conclusion.

It appears to us that the court failed to apply to the direction requirement the same standard of explicitness which it imposed upon petitioner's assertion. We submit that on this record it cannot be said that the committee's rejection of the petitioner's contentions was in any way communicated to him. If constitutional rights are valuable rights, they should not be lost in the shuffle of colloquy. Yet the government's argument that petitioner was apprised that his objections were rejected is based only upon the thesis that he was asked other questions which raised the same objections. Certainly, this Court should not acquiesce in a view which would require that the witness' rights before congressional committees be asserted with an overpowering roar, but would permit the committee's responsibilities in protecting his rights to be discharged by an indistinguishable mumble.

C. The court below should at least have remanded the case to the trial court with instructions to acquit.

At a minimum, it was required that the issue be resolved by the trier of fact. The issue involves a central question in the case, namely, the intent of petitioner. Thus, in the *Quinn* case, *supra*, the lower court ruled that, "The deliberate and intentional character of the refusal is an element of the offense, to be determined from all the circumstances by the trier of the facts." 203 F. 2d at 25.

An examination of the record of the proceedings in this case reveals that the trial judge in no way considered or applied this guiding rule of law. The opinion of the trial judge demonstrates beyond any doubt that the trial judge did not apply this rule. The trial judge was under the impression that a mere refusal to answer was sufficient to constitute an offense under the statute. He did not consider

at all whether petitioner "was aware of the intention of his inquirer that answers were required despite his objections." 203 F. 2d at 25. We do not understand how a "general verdict of guilty" (R. 361) erased the obligation of the court below to remand with instructions to apply the correct rule of law.

The opinion of the trial judge in enunciating the principles which he followed in arriving at the verdict of guilty cannot be disregarded. If the trial had been by jury, the instructions of the judge would have required reversal and remand on this issue. Since the trial was without jury, the opinion of the judge stands as a statement of the principles which guided him in arriving at the verdict. While in this opinion the trial judge (R. 284) made a series of findings on what he considered to be the essential ingredients of the offense, he did *not* make a finding that petitioner "was aware of the intention of his inquirer that answers were required despite his objections." The issue is not whether there is any evidence in the record which could have supported such a finding by the trial judge. The fact of the matter is that the trial judge made no such finding; he never considered the issue. Petitioner is entitled, as the court below pointed out in *Quinn*, to a trial on all of the material elements of the offense by the trier of the facts and not by an appellate court. And he must be acquitted by the trier of the facts unless *all* the material elements are found against him beyond a reasonable doubt. Compare *Bollenbach* v. *United States*, 326 U. S. 607, and *Weiler* v. *United States*, 323 U. S. 606.

In summary, we submit (1) the court below applied an improper standard on the issue of direction; (2) at a minimum a new trial should have been granted and the case remanded so that the trier of the facts might apply the standard which the court did apply, and (3) even if it was appropriate for the court below to rule on this issue for the first time, the court erroneously concluded

that petitioner was made aware of the intention of the committee that he answer despite the grounds he advanced for refusing.

CONCLUSION

For all of the foregoing reasons, the judgment of conviction must be reversed and the indictment dismissed.

Respectfully submitted,

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APPENDIX

Statements of Prominent Americans Critical of the House Committee on Un-American Activities.

From the inception of the house committee leaders in American life have criticized its operations, its standards and its methods. The following are excerpts from but a few of a large number of such critical statements:

1. Robert E. Cushman, "Civil Liberty and Public Opinion." *Safeguarding Civil Liberty Today.* The Edward L. Bernays Lectures of 1944 given at Cornell University, 99-100.

> "In any comment on the growth of this attitude of intolerance, this smug assumption that our civil liberties really belong only to the respectable and the orthodox, one cannot ignore the sinister influence of Martin Dies, from 1938 to 1944 chairman of the House Committee to Investigate Un-American Activities. He contributed two ideas to official and unofficial thought and action in the field of civil liberties. These have taken deep root in wide sections of the public opinion of the country, and the result has been an exceedingly dangerous confusion of mind which I regard as a serious threat to American democracy.
>
> "Mr. Dies' first and most conspicuous contribution has been to make intolerance synonymous with patriotism. He set out, it is true, to expose genuinely dangerous and subversive people who were an actual menace to the public security. He did expose some, although it now seems clear that our very efficient Federal Bureau of Investigation would have dealt with all of these people quite competently without help from Dr. Dies. He then embarked upon a systematic campaign to suppress freedom of political and economic opinion. This campaign moved under the banner of Americanism; and the opprobrious epithet 'un-American' was applied to all those who indulged in any open criticism of our existing institutions, our so-called American

way of life, or of Mr. Dies. In short, good loyal American citizens who ought to know better were persuaded to give their support to the suppression of free speech and free press on the grotesque theory that they were thereby showing their loyalty to the basic principles of American democracy. Bigotry was made not merely respectable but notable. By the skillful use of labels, or slogans, American public opinion was inoculated with the dangerous idea that true Americanism consists in the stalwart defense of the *status quo* and the suppression of those dangerous and disloyal people who are unpatriotic enough to want to criticize it or suggest any change in it."

2. Statement by Dean Christian Gauss and Hadley Cantril, Leo P. Crespi, Philip A. Crowl, Charles C. Cumberland, Frank D. Graham, William Ebenstein, Kenneth W. Hechler, Jeter A. Iseley, Alpheus T. Mason, Willard Thorp, R. D. Welch, and H. H. Wilson of the Princeton faculty concerning the Hollywood investigation of the House Committee on Un-American Activities, 1947.

"The issue brought into national focus by the House Un-American Activities Committee's investigation of Hollywood is not Communism. It is the old issue of Civil Rights, Rights inherent in the American conception of democracy and guaranteed to every American citizen by the Constitution of the United States. We protest against the Committee's flagrant violation of these rights."

3. Bosley Crowther, *The New York Times*, June 8, 1947, II, p. 1.

"The recent Hollywood hearings, at which certain handpicked finger-men and stars allegedly informed the House Committee of 'dangerous Communist influences' in our films, were much more disturbing than funny, as some complacent gentlefolks have quaintly claimed, and it is amazing that they have not been

resented by industry leaders with open alarm. On the basis of arbitrary statements which the committee chairman chose to release, millions of newspaper readers have had their minds infected by the thought that Hollywood is crowded with 'Red' schemers, in every studio and every swimming pool, needling their Communist propaganda into movies and corrupting the political thinking of tycoons.

"And, as though this unreasoned suspicion were not sufficiently inimicable to the screen, casting upon it another of those familiar invidious slurs, there would seem to be cause for the leaders to resent something else very much. That is the questioning of their privilege under the Constitution to make pictures as they choose. By giving particular circulation to i nuendoes that the industry—or certain producers in it—had made un-American films, the committee cut loose covertly at the inalienable freedom of speech. It introduced the shadow of political censorship, which the men of the motion picture industry should challenge at the drop of the first hint."

4. President Truman, on September 22, 1948, denounced the committee as "more un-American than the activities it is investigating." *New York Times*, September 23, 1948.

5. President Roosevelt on October 25, 1938, assailed the Committee for intervening in the election of Governor Murphy of Michigan. President Roosevelt stated (*New York Times*, October 26, 1938):

"I was very much disturbed. I was disturbed not because of the absurdly false charges made by a coterie of disgruntled Republican office holders against a profoundly religious, able, and law-abiding Governor but because a congressional committee charged with the responsibility of investigating un-American activities should have permitted itself to be used in a flagrantly unfair and un-American attempt to influence an election.

"At this hearing the Dies committee made no effort to get at the truth, either by calling for facts or by allowing facts and personal opinion on the other side.

"On the threshold of a vitally important Gubernatorial election, they permitted a disgruntled Republican judge, a discharged Republican city manager, and a couple of officious police officers to make lurid charges against Governor Frank Murphy, without attempting to elicit from them facts as to their undeniable bias and their charges and without attempting to obtain from the Governor or, for that matter from any responsible motor manufacturer, their version of the events."

6. Hadassah, women's Zionist organization, at its convention, October 27, 1953 adopted a resolution opposing congressional methods:

"* * * which, though they may be intended to protect our way of life, limit freedom of speech and expression, attempt to control thought and interfere with free exchange of opinion" (*New York Herald Tribune*, October 28, 1953).

7. Protestant Episcopal Bishop Donegan, in a speech reported in the *New York Times*, May 13, 1953, referring to the congressional anti-subversive committees, attacked the "spurious patriotism whose main intent seems to be to investigate anyone who does not fit into their pattern of narrow-minded outlook."

8. *National Council Outlook*, official journal of the National Council of Churches, in its issue of May 1953, said:

"If it is important to detect a conspiratorial Communist who wears the robes of a clergyman, it is equally important not to confuse a 'liberal' Christian or honest advocate of social reform with Communists. This is something which is now happening in an alarming and inexcusable degree.

"The latest shocking illustration is the case of the House Committee on Un-American Activities and the

Right Reverend Henry Knox Sherrill, presiding bishop of the Protestant Episcopal Church. * * * The allegation against him is that he was a sponsor of a congress of Soviet-American Friendship, and the reader is left to assume that this means a reprehensible pro-Communist attitude. But now note the facts which the document of the Committee on Un-American Activities wholly omits. The date of the sponsorship was 1942, when the U. S. A. and the U. S. S. R. were allies in arms, and when it was a patriotic duty to support the war. * * *

"The case of Bishop Sherrill is not an isolated one. There are hundreds of other clergymen who have been treated with similar unfairness and similar un-American procedures. * * * Such an irresponsible procedure as that which we have described above is a grave disservice to our nation, and must be resolutely opposed. It contributed to a mood of hysteria and to a confusion of mind in which people can no longer distinguish between communism and honest social criticism in the old-fashioned American way.

"To confuse non-conformity with disloyalty, or efforts at constructive social progress with subversion, is to undermine the very American freedom which we seek to preserve. It is also to play into the hands of the enemies of the American way of life."

9. *Christian Register*, in its issue of May, 1953, stated:

"The internal threat to this country is the misappropriation of the investigating rights of congressional committees. Instead of doing their proper task of investigating for the purpose of making law, they take on the coloring of judicial and executive procedures.

"Why are these little men dissatisfied with the appropriate defense against conspiracy which resides in law, in court, in executive power? Do they distrust constitutional government, or do they distrust the personnel of the vast majority of the Congress who do not join wtih them? Do they distrust the judiciary, the President?

"Whether their distrust be real or feigned, they spread a fear amongst the people, and that fear must be resisted if communism is to decrease and the lawful governments of free men are to remain secure."

10. Former Attorney General Francis Biddle, wrote in *The Fear of Freedom* (1951):

"The committee's activities have helped to create a state of distrust, of prejudice, and of suspicion touching at times on panic. The committee has suggested that vast spy rings were active throughout the country, hinted at revolutionary movements, insisted that our government was infiltrated with Reds. It has charged that our institutions were contaminated by subversive and treasonable propaganda in public service, labor unions, schools, theaters, moving pictures—even in our churches.

"Due process of law was not considered by the committee to have any place in congressional investigations. At the beginning Dies announced that he was going to take a 'dignified plane' for the investigation—he was going to have no 'shooting in the dark * * * no star chamber proceedings.' Charges must be supported by facts. In practice, however, the hearings took the form of inquisitions. Trial by publicity implemented guilt by association" (at 114-115).

"There can be little doubt that those members of the Un-American Activities Committee who were in control of its policy and methods (usually the chairman, but seldom without support from other members who shared his conception of 'Americanism') utilized its investigations and reports for definite political ends. The committee was anti-Labor, anti-Liberal, anti-New Deal—and frankly so. It attacked at one time or another Frank Murphy, Harold L. Ickes, Frances Perkins, Aubrey Williams, James Lawrence Fly, Mordecai W. Johnson, Leon Henderson, Shirley Temple, Edward U. Condon, The American Society for International Law, the National Labor Relations Board, the Bituminous Coal Commission, the Board of Economic Warfare.

"When Frank Murphy was running for Governor of Michigan in 1938 the committee arranged for the introduction of evidence, at a hearing fixed a few weeks before the election, that the sit-down strikers in Michigan had been instigated by the Communist Party" (at 117).

"It is worth taking a look at this incredible performance [the 1947 Hollywood investigation], because it illustrates the power and influence of the committee, and at the same time its futility; brings to the surface its shoddy standards of Americanism based on fear and confusion, and its ideology of mediocrity and obscurantism; and displays the techniques of publicity and unfairness which the American public has come to expect in congressional investigations.

"The hearings show the absurdity of the committee's yardstick—*un-American activities.* The phrase itself is meaningless and sterile, reflecting the timid longing to be correct, an attitude at its best as depersonalized as the culture of Hollywood to which the investigation was directed, at its worst, narrow, dark, and brutal. Jean-Paul Sartre has suggested that we are engaged in asking ourselves whether we are American enough, afraid of being less American than our neighbor, trying to live up to the level of his commonplaceness. 'There are no rules or regulations,' wrote André Visson, 'for remaining an Englishman, a Frenchman, an Italian, or a Swede. There are no committees on un-English, un-French, un-Italian, or un-Swedish activities.'

"The committee's antics in the Hollywood investigation presented an extraordinary spectacle. Representative J. Parnell Thomas, a Republican from New Jersey, was the chairman. He exhibited his impartiality by announcing, at the opening of the hearings, before any testimony had been given, that there was 'no question that there are Communists in Hollywood'" (at pp. 124-125).

11. The National Council of the Churches of Christ in the United States of America on March 11, 1953, issued the following statement (*New York Times*, March 12, 1953):

"Free ministers in free pulpits, preaching to free people the liberating truth of Christ, are a chief bulwark of American freedom and the best guarantee of its future. This freedom must be maintained. Certain methods, however, of congressional committees investigating Communist activities in educational institutions endanger the very freedom which we seek to preserve.

"Congress has the right and duty to make such investigations as may be necessary to secure the information upon which sound legislation may be based. Conspirators in any area of life who seek the violent overthrow of the government of the United States should be discovered, tried in American tribunals, and, where found guilty, punished.

"No witness at any investigation should be denied fair and dignified treatment. Having sworn to tell the truth, the whole truth and nothing but the truth, he should be permitted the right of an uninterrupted initial statement of reasonable length, since unlimited right of cross-examination by all members of the investigating committee is allowed.

"No committee should circulate on its letterhead, over the signature of its members or employees, unsupported charges against individuals or organizations which it has made no effort to investigate or substantiate.

"The proper and essential function of congressional investigations must be preserved. It must be jealously guarded against abuse through methods that are now bringing it into disrepute.

"At this moment, when national unity based upon mutual confidence is of paramount importance to our security, men in responsible positions must not, through unsubstantiated charges and blanket indictments, destroy confidence in our American schools, colleges and universities. To do this would be to play into the hands of the Communists.

"There should be no encroachment upon the sound American pattern of local control of schools. Na-

tional regimentation, whether of business, of labor, of religion, or of education, is abhorrent to Americans. No regimentation is more dangerous than that of the mind.

"The control of our educational institutions, in keeping with the American voluntary principle as opposed to statism, is not a function of congressional committees, but is properly vested in boards of trustees and of education selected for that purpose. These boards must exercise the responsibility of dealing with the occasional subversive within their institutions."

12. The Very Rev. James A. Pike, dean of the Cathedral of St. John the Divine, New York, in his May 17, 1953 sermon said:

"The Ascension of Christ has a message for us in the present peril we are in from the abuse of the congressional investigatory power.

"How can churchmen best counteract the present unwarranted assaults, threats and fulminations of the un-American Activities Committee? They can of course quite properly protest the un-American character of this committee's procedures, its trial by press and television, its reversal of the principle that a man is innocent until proven guilty. One reason why it has been possible for these congressional smearers to highlight particular Christian leaders is that the church as a whole has been increasingly silent in recent years about the social application of Christianity, leaving those still so concerned in a conspicuous and 'exposed' position. The church has been in retreat in its social gospel—from fear of reprisals and from the confusion which has been engendered by the world communist threat. Let the church rise to its responsibilities to bring a critique on unrighteous conditions in our land, and we will demonstrate that there is a healthy ferment that is by no means communistic and in fact is the best defense against communism, because it addresses itself to the conditions that breed communism. We will thus so surround our brethren who are being smeared (like Bishops Oxnam and Sherrill) that there will be confusion in the smearers'

camp—for they will know that they cannot investigate us all, and if they try to smear us all they will be made ridiculous in the public eye." (Reprinted in *The Churchman*, June 1953.)

13. *Congress Weekly*, published in New York by the American Jewish Congress, ran an editorial, "The Challenge to McCarthyism," May 11, 1953, which stated:

"The three high priests of McCarthyism—Senator McCarthy himself, Senator Jenner and Representative Velde * * * have secured unrestrained control of the power of congressional investigation, which they are using as an inquisition, to pry into men's thoughts and beliefs, to ferret out the dissenter and non-conformist, and to terrorize any American whose views are not approved by the unholy trinity of McCarthyism.

"In the midst of this roaring wilderness of political atavism, where the very air is filled with bombast, menace and threat, there has been a dismaying silence on the part of political figures whom Americans have always regarded as bold and passionate defenders of traditional American liberties and rights. This ignominious silence is itself a measure of the abyss into which we have plunged."

14. The Council of Bishops of the Methodist Church adopted a statement at the Annual Meeting in Omaha, April 30, 1953, which said:

"We are dismayed and genuinely concerned that in a period when its witness is so sorely needed the church has been persistently and falsely accused in many quarters and her worldwide leadership thereby jeopardized.

"In recent weeks, one of our esteemed colleagues has been subjected to accusations that were untrue by methods that were manifestly unjust. Bishop Oxnam needs no defense at our hands. These recent accusations and insinuations have been answered in detail by him through the press and over the radio and television, and his statements, clearly and forth-

rightly made, are convincing to all unbiased and fair-minded men.

"This incident is indicative of a trend in our American life that threatens the security of our institutions and causes us to fear for the future of our long established liberties." *The Churchman*, June 1953.

15. William T. Gossett, *Are We Neglecting Constitutional Liberty? A Call to Leadership.* 38 ABAJ 817. Mr. Gossett is a vice-president and general counsel of the Ford Motor Company.

"There is considerable doubt, I think, as to the legitimacy of" the purpose of influencing public opinion (818).

* * * * *

"Congressional investigations which are launched for the purpose of inquiring into questions of personal conduct, closely resemble the inquisitorial functions of our grand juries. As all lawyers know, in any investigation or grand jury proceeding, it is inevitable that many fruitless lines of inquiry will be undertaken. And so some false leads must be pursued. The inviolate rule of secrecy in a grand jury proceeding is predicated upon the urgent necessity of protecting the good name of the many innocent persons who must be questioned and who, through no fault of their own, might be under suspicion before a determination is made as to which, if any, of those under investigation will be subjected to indictment or other action.

"But no such protection is accorded to those who are so unfortunate as to be required to testify before many of our Congressional committees. Not only are witnesses interrogated in public, but they are denied basic constitutional safeguards which in a court proceeding are granted as a matter of right, even to one who, after investigation, has been accused of a crime. The constitutional safeguards to which I refer, of course, are the rights of the accused to be informed in advance of the nature of the charges against him; his right to be confronted with the witnesses who testify against him, and to subject them to cross-examination;

his right to compulsory process for obtaining witnesses in his favor; his right to be represented by counsel; and his right to testify then and there in his own defense.

"Congressional investigations which delve into matters of personal conduct assume the aspects of a trial and thus abridge the rights of individuals, guaranteed by the Constitution. And there have been cases in which, as a result of the publicity of committee hearings, witnesses have been exposed to such penalties as dismissal from their jobs, loss of pension payments, character assassination and injury to their reputations.

"Those who would defend such practices are quick to point out that a witness before a Congressional committee is no in jeopardy—that is, he is not subject to a jail sentence by the committee in connection with the matter about which he is being interrogated. But the argument ignores the fact that the committee has the power to sully a man's reputation unmercifully, and to many men a good name is fully as important as merely being out of jail. Moreover, a committee can send a witness to jail for refusal to answer a question—even one which a court might not require him to answer.

"The practices of investigating committees thus are without proper standards. Persons are now subpoenaed before such committees and afforded no right to counsel. Although they often are subjected to the most searching cross-examination themselves, they are denied the right to cross-examine those who testify against them. If they are so-called hostile witnesses, they often are not even accorded the right to make a statement—prepared or otherwise; and if the behavior of the witness is such as not to please the committee or some of its members, he can be summarily punished.

"Some committee members seemingly have viewed the committee as a final court of justice sitting in judgment on the conduct of individuals appearing before the committee. Thus they usurp the judicial function. On the other hand, committee members can and do slander witnesses with impunity, secure in the knowledge that there can be no retaliation in court.

* * * * * *

"In such an inquiry there is no assumption that the individual is innocent until proved guilty. There are none of the safeguards of a trial to which, by the Constitution and the law, each man is entitled. Instead, there is a type of trial by public opinion, a pillorying of individuals not accused of crimes—of individuals only suspected of being engaged in or knowing something about some improper activity. And the rules are the same whether the witness is innocent or guilty.

"* * * It must be apparent that if such tactics are permissible with respect to suspected criminals, they may also be permissible with respect to persons who hold views in conflict with those of the overwhelming majority. Thus, we run the risk that we might all become guilty of imposing that 'tyranny of the prevailing opinion and feeling' which John Stuart Mill believed so serious a danger to democracy." (819-20).

16. Mrs. Agnes E. Myers in an address at the seventy-ninth annual convention of the American Association of School Administrators, in Atlantic City, February 17, 1953 (*New York Times*, February 18, 1953).

"A warning that the Congressional committees investigating schools and colleges threaten not only education but the democratic way of life was voiced here today by Mrs. Agnes E. Meyer, a member of the board of directors of the National Citizens Commission for Public Schools.

"In a major address at the seventy-ninth annual convention of the American Association of School Administrators, attended by 17,000 teachers, superintendents and key educators, Mrs. Meyer scathingly denounced the activities of Senators Joseph R. McCarthy, Republican of Wisconsin, and William E. Jenner, Republican of Indiana, and Representative Harold H. Velde, Republican of Illinois.

"Asserting that academic freedom and American democracy itself were threatened, Mrs. Meyer lashed into Senator McCarthy, calling him "our modern grand inquisitor." * * *

"'His record as an investigator is shameful,' Mrs. Meyer declared. 'He has accused innocent people of communism on mere hearsay evidence, thus traducing our American principle of law that a man is presumed innocent until proved guilty. By such methods he has weakened the morale of our Federal service and spread suspicion and fear throughout the nation. He has stirred up hatred and used every device to destroy the confidence of Americans in each other. He has used the technique of insinuation against innocent people and debauched the Senate's power of investigation by introducing authoritarian practices that are akin to the communism which he professes to hate.'

"Mrs. Meyer said that Senator McCarthy would not dare to challenge education now if the American public had organized a nation-wide defense of academic freedom when previous Congressional attacks began. Because of the tactics of Mr. McCarthy, Mr. Jenner and Mr. Velde, Mrs. Meyer asserted, the morale of the teachers has been seriously undermined.

"'The American people as a whole must now realize that they are the ones who make the climate of public opinion and that they must come to the defense of our public schools and of our institutions of higher learning,' declared Mrs. Meyer. 'For the independence of our whole educational system will be jeopardized if Velde, Jenner and McCarthy are not stopped in their tracks before they get under full sail.'

"These men, she charged, are corrupting the legislative process and debasing the Congressional power of investigation into an attack on the very foundation of liberty itself. She urged that the press, radio, television and church organizations take a firm stand against the school investigations. She warned that 'either the clergy of all denominations must now unite in a protest against these latest Congressional inquisitions, or they will be the next to burn at the stake.'"

17. Elmer Davis, *Must We Mislead the Public?* Fifth Annual Lecture sponsored by Twin Cities Local, American Newspaper Guild, CIO, and School of Journalism, University of Minnesota. Minneapolis, November 3, 1951.

> "The Founding Fathers wrote it into the Bill of Rights that no person shall be subject, for the same offense, to be twice put in jeopardy of life or limb—and thought they had taken care of that. If a man was acquitted in court, that ended it. They did not foresee that Congressional committees would take over a considerable part of the judicial process, and would hold that they are not bound by the limitation which the Constitution imposes on judicial agencies. Technically this contention is no doubt correct, since a hearing before a Congressional committee does not put a man in jeopardy of life or limb. The only penalty he can suffer, ordinarily, from Congressional condemnation, unless he is foolish enough to perjure himself, is the loss of his reputation and standing in the community—a deprivation which the average senator or representative seems to regard as trivial, at least when it happens to somebody else. The victim may also of course suffer the loss of an opportunity to make a living, at any occupation that he knows; but the Constitution says nothing about that.
>
> "In any case, Congress seems to have established the principle that no man is ever acquitted, so long as a single influential member of either House is out to get him. If a committee—or three or four committees—have investigated him and found him innocent, that only means that they keep on setting up hearings before other committees, until they find one that will pronounce him guilty. Double jeopardy has been ruled out in the courts; but before Congress any man may be in multiple and perpetual jeopardy for the same offense, actual or only unconvincingly alleged.
>
> "The juridical and ethical implications of this new doctrine are beyond the scope of this argument. What I am concerned with is its effect on news reporting, on the endeavor to give the public a reasonably accurate picture of what is going on. That is getting harder and harder to do; and one thing that makes it harder is

the fact that this doctrine of perpetual jeopardy has been implemented by a couple of fantastic new weapons —what is called the pertinent excerpt, and what might be called the seven-shot automatic repeating witness."

18. Fourteen prominent Bostonians, including the Episcopal Bishop of Massachusetts, the rabbi of Temple Israel, Boston, and professors at Harvard University, on May 7, 1953, issued a statement to the press that the methods of the committee were those of a "police state" and that they were "undermining the entire Constitution and our democratic system."

19. The General Council of the Presbyterian Church in the United States of America, on November 2, 1953, issued a letter to Presbyterians in which it included the following statement:

"Under the plea that the structure of American society is in imminent peril of being shattered by a satanic conspiracy, dangerous developments are taking place today in our national life. Favored by an atmosphere of intense disquiet and suspicion, a subtle but potent assault upon basic human rights is now in progress. Some congressional inquiries have revealed a distinct tendency to become inquisitions. These inquisitions, which find their historic pattern in medieval Spain and in the tribunals of modern totalitarian states, begin to constitute a threat to freedom of thought in this country.

"Treason and dissent are being confused. The shrine of conscience and private judgment, which God alone has a right to enter, is being invaded. Un-American attitudes toward ideas and books are becoming current. Attacks are being made upon citizens of integrity and social passion which are utterly alien to our democratic tradition. They are particularly alien to the Protestant religious tradition which has been a main source of the freedoms which the people of the United States enjoy." *New York Times*, November 3, 1953.

20. The Commission on Justice and Peace of the Central Conference of American Rabbis, on March 15, 1953, issued a statement denouncing the "undemocratic methods" employed in the congressional investigations conducted by Senators McCarthy and Jenner and Congressman Velde. The statement continued:

> "We believe that the national security of our country is rooted in the individual freedom of its citizens. We reject the concept that there is any incompatibility between freedom and security, and that individual freedom must be curtailed in the interest of national security." (*New York Times*, March 16, 1953.)

21. J. R. Wiggins, managing editor of the *Washington Post*, in an article, "The Printed Word" (*Library Journal*, September 1, 1953), included the following comments concerning congressional investigations:

> "When congressional investigators, however well intentioned, invade with their inquiries the schools and churches (even though they interrogate only individual teachers and churchmen and not the institutions as such), other recollections are stirred.
>
> "There is good reason, in our memories, for feeling anxiety when government investigates the teacher and the clergyman. Even schoolboys can remember from their texts that so great a man as John Locke was driven by a hostile government from the University of Oxford. Since the reign of Queen Elizabeth, Englishmen have feared government tribunals empowered to exercise control of churches and schools. Her Court of High Commission was long held the most grievous tribunal of her reign. In July, 1686, James II determined to create another Court of High Commission, despite the fact that its very establishment was an outrageous violation of the law and a direct attack on the Church. As Macauley describes this investigating body:
>
> 'All colleges and grammar schools, even those founded by the liberality of private benefactors, were placed under the authority of the new board.

All who depended for bread on situation in the Church or in academical institutions, from the vice chancellors of Oxford and Cambridge down to the humblest pedagogue, were at the Royal mercy. If any one of the many thousands was suspected of doing or saying anything distasteful to the government, the commissioners might cite him before them. In their mode of dealing with him they were fettered by no rules. They were themselves at once prosecutors and judges. The accused party was furnished with no copy of the charge. He was examined and cross examined. If his answers did not give satisfaction, he was liable to be suspended from his office, to be ejected from it, to be pronounced incapable of holding any preferment in future. If he were contumacious he might be excommunicated, or in other words, be deprived of all civil rights and imprisoned for life.'

"There is a contemporary ring to this description of inquisitorial power that ought to give us pause.

* * * * * * *

"One fatal weakness marks the congressional investigations of the press, libraries, schools, and churches. Most of these inquiries have not been concerned with the development of information essential to the act of legislating. Little legislation has emerged from them. These congressional committees have been performing essentially judicial functions. In many cases, they have combined executive, judicial, and legislative functions. As Madison has wisely observed, the concentration of legislative, judicial and executive functions in a single body is the very definition of tyranny.

"The legislature is peculiarly unfitted for the discharge of judicial duty. It is especially deficient as a court of justice and its deficiencies have been well understood in Anglo-Saxon countries for 200 years.

"Macauley has well stated these weaknesses: 'However clearly political crime may have been defined by ancient laws, a man accused of it ought not to be tried by a crowd of five hundred and thirteen eager politicians, of whom he can challenge none even with cause, who have no judge to guide them, who are allowed to

come in and go out as they choose, who hear as much or as little as they choose of the accusation and of the defense, who are exposed, during the investigation, to every kind of corrupting influence, who are inflamed by all the passions which animated debate naturally excite, who cheer one orator and cough down another, who are roused from sleep to cry Aye or No, or who are hurried half drunk from their suppers to divide.'

"This, of course, is not a description of our Congress, but of the House of Commons of generations ago. But though our legislative body may have improved in sobriety and demeanor, many of the solid objections that Macauley makes against all legislative bodies acting in judicial capacity still are valid.

"And surely, anyone who had ever read Macauley's pungent summary of the fallibility of a legislature in the capacity of a court must inevitably have recalled it upon that dreadful day when the House of Representatives thundered its applause and shouted its cheers as an eminent member made the utterly baseless charge that the most respected Bishop of one of the largest Protestant denominations in this land 'served God on Sunday and the Communist front for the rest of the week.'

"Great as is our confidence in and preference for legislative agencies, we must take note of the pregnant question of the English historian, Smollett: 'What difference is it to the subject, whether he is oppressed by an arbitrary prince, or by the despotic insolence of a ministerial majority?'

"Actually, he might have pointed out that it sometimes is more baffling to contend with a hydra-headed legislative tyranny than it is to cope with a single tyrant against whom outraged public opinion can be focused."

22. Representative Jacob K. Javits, in an address before the Association of the Bar of the City of New York on December 8, 1953, on the "Protection of Individual Rights in Congressional Investigations," stated:

"Congressional investigations, particularly of subversive activities and communists, have now turned into prosecutions because of the ensuing 'penalties' to individuals of loss of reputation, livelihood and standing in the community incident to public disclosure —often even of mention—in such investigations. It is essential that the House of Representatives and the Senate respectively adopt rules of procedure which will set a tone for congressional investigating committees of fair dealing with the reputations of individuals, will give the public a standard, by which to judge, of fairness in their activities and will require the House of Representatives or the Senate as a whole, as the case may be, to assume responsibility for their respective investigating committees. The time has come for the whole Congress to regain control over its own investigating committees and to assume responsibility for their activities. Once authorized and supplied with an appropriation present congressional rules and practices, practically speaking, release investigating committees from control by the very body which created them."

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In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1953

No. [redacted]57

JULIUS EMSPAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 353-364) is reported at 203 F. 2d 54. The opinions of the District Court denying petitioner's motions to dismiss the indictment are reported at 95 F. Supp. 1010, 1012.

JURISDICTION

The judgment of the Court of Appeals was entered on December 19, 1952 (R. 365). A petition for rehearing was denied on April 13, 1953 (R.

375). The petition for certiorari was filed on May 13, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1264(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence supports the finding, implicit in petitioner's conviction without a jury, that he did not base his refusal to answer certain questions put to him by a subcommittee of the House Committee on Un-American Activities on a claim of privilege against self-incrimination.

2. Whether the evidence supports a similarly implicit finding that petitioner was apprised of the fact that the grounds asserted by him as a basis for refusal to answer had been rejected by the Committee and that he was expected to answer the questions.

3. Whether a sufficient showing was made to entitle petitioner to a dismissal of the indictment, or to a hearing to investigate the qualifications of the grand jurors, when it was shown that ten of the twenty members of the grand jury were government employees and that two more were wives of government employees, and various data were offered purporting to show that government employees at the time of the indictment could not be impartial with respect to a person alleged to be a Communist.

4. Whether under the First Amendment, a Congressional Committee, duly authorized to investigate security measures designed to prevent Communist union officials from gaining access to plants

doing secret defense work, may question an official of a trade union with a substantial membership in such plants as to whether he is a member of the Communist Party or certain other organizations thought to be Communist-front groups, and whether he knows certain other trade union officials.

STATUTE AND RULE INVOLVED

2 U.S.C. 192, R. S. 102, as amended, provides as follows:

> Refusal of witness to testify.
>
> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Federal Rules of Criminal Procedure:

> Rule 6. The Grand Jury.
>
> * * * * *
>
> (b) Objections to Grand Jury and to Grand Jurors.
>
> * * * * *

(2) Motion to Dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

STATEMENT

On November 20, 1950, petitioner Emspak was indicted by a grand jury in the United States District Court for the District of Columbia for having wilfully refused to answer 68 questions before a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives, in violation of the provisions of 2 U.S.C. 192 (R. 4-13).

He pleaded not guilty (R. 13-14), and moved to dismiss the indictment (R. 14-17). One of the issues raised by this motion was a contention that the indictment was invalid because fewer than 12 members of the grand jury which returned it were impartial (R. 16), for the reason that 10 of its members were government employees and two more were wives of government employees. In the alternative, a hearing was sought so that this bias could be shown (R. 25-27). The motion was supported by affidavits by petitioner's counsel to the

effect that, by virtue of the atmosphere revealed and exemplified by such matters as Executive Order 9835, known as the President's Loyalty Order, and the enactment of the Internal Security Act of 1950, the climate of opinion in Washington was such that government employees would have hesitated to vote against the return of an indictment in this case (R. 25-27, 85-86). This affidavit was in turn supported by 9 newspaper clippings, some with unsigned articles, and others reflecting the unsworn and untested views of certain columnists, some of whom expressed the view that the loyalty program was having bad effects on government workers (R. 97-114). On the Government's motion, these affidavits were stricken, and the motion for a hearing was denied (R. 116-119; 95 F. Supp. 1010), on the ground that the affidavits constituted insufficient basis for inferring bias under the tests laid down by this Court in *Dennis* v. *United States*, 339 U.S. 162.

On the trial of the case, the following was stipulated or shown:

The Committee on Un-American Activities was authorized, both by statute and House Resolution to make, from time to time—

> * * * as a whole or by subcommittee * * * investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks

> the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

60 Stat. 828; H. Res. 5, 79th Cong., 1st sess. Acting pursuant to this authorization, and for the purpose of reporting on a bill (the so-called Wood Bill) which had been referred to it by the House, the Committee was, during December 1949, as the committee counsel testified (R. 157), investigating into "the infiltration of Communist labor unions working on defense projects, from the standpoint of individuals who weren't actually working in the plant but who were officials of the union, as distinguished from those who had actual contact with classified material." The hearing to which the petitioner was called, the counsel also testified, "was set up for the particular purpose of developing the practices and duties of various officials of the national organization of U E [1] with the idea of determining whether or not there was a difference in practice, in certain Government agencies, in screening or clearing officials of the union for security purposes in plants where the Atomic Energy Commission, or the Army, Navy, and Air Force, were having secret Government projects worked upon" (R. 157).

Pursuant to the Committee's subpoena, petitioner, who was general secretary and an ex-officio member of the Executive Committee of UE, ap-

[1] United Electrical, Radio, and Machine Workers of America.

peared before a subcommittee of the Committee on December 5, 1949 (R. 239, 159) at which time he was asked a number of questions, for the most part relating to the structure and activities of the United Electrical, Radio, and Machine Workers of America and to his activities as editor of the U E News (see R. 159-199, 37).

These questions petitioner answered. But to sixty-eight of the questions asked him by the subcommittee, he made responses which the Committee did not regard as answers. Fifty-eight of these questions asked in substance that he state whether or not he knew certain named individuals and could disclose whether or not those individuals presently held or had held certain positions in the UE (R. 5-12).[2] Eight of the questions related to petitioner's possible membership in the Communist Party, present or past, and to various evidences of that membership (R. 12-13); and the other two asked about his "affiliation" with the National Federation for Constitutional Liberties and his "association" with the Civil Rights Congress (R. 12).[3]

Petitioner's refusal to answer these questions,

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[2] Petitioner showed by affidavit, in opposition to his indictment, that 17 out of the 50 persons about whom he was questioned, and refused to answer, had been charged before a Congressional committee as having Communist and Communist-front affiliations (R. 67-85); and that the UE itself was thought to be Communist dominated (R. 51-56).

[3] As to these questions, petitioner showed by various documents introduced in opposition to the indictment that he had been charged with being a Communist (R. 29-36, 47-49, 50). He also stated that the two named organizations had been said to be communist front groups (R. 32).

which he now contends was based on a claim of privilege against self-incrimination, but which he then claimed was not a refusal at all (see below), may be illustrated by the questions and answers to some of the earlier questions, since the later answers were in general a reference to the earlier ones. The relevant colloquy follows (R. 167-173):

* * * * *

Mr. TAVENNER [Committee Counsel]: Mr. Emspak, are you acquainted with Joseph Persily?

Mr. EMSPAK: Mr. Chairman, I would like to say something at this point.

Mr. MOULDER: You mean in response to the question?

Mr. EMSPAK: I will answer the question; yes, in response to the question and as a statement of position.

* * * * *

As an individual I would like to say one thing, and that is this: The line of questioning that counsel is developing now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am——

* * * * *

* * * I owe to the rich heritage and tradition of this country. I do not believe that a committee of this kind, especially in view of

the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country, too.

Mr. MOULDER: I want to give you full opportunity to express yourself in answer to the question, but you are making an oration now.

Mr. EMSPAK: It is not an oration. It happens to be a very profound personal feeling.

Mr. MOULDER: What is the question?

Mr. TAVENNER: The question is: Are you acquainted with Joseph Persily.

Mr. MOULDER: How do you spell that?

Mr. TAVENNER: P-e-r-s-i-l-y.

Mr. EMSPAK: Because I have a stake in this country——

Mr. MOULDER: You are not answering the question. He asked you if you are acquainted with this man.

Mr. EMSPAK: I will answer it.

Mr. MOULDER: Are you or not?

Mr. EMSPAK: I was on the verge of answering it.

Mr. MOULDER: If you have any explanation to make you will be permitted to do so after you answer the question.

Mr. EMSPAK: Because of my interest in what is going on these days, because of the activities of this committee——

Mr. MOULDER: Are you going to answer the question?

Mr. EMSPAK: Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

Mr. MOULDER: Do you think it corrupts you to answer the question?

Mr. EMSPAK: I certainly do.

Mr. MOULDER: Why does it corrupt you?

Mr. EMSPAK: Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country.

Mr. MOULDER: You are not going to take over this committee.

Mr. EMSPAK: I don't want to.

Mr. MOULDER: And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

Mr. TAVENNER: Are you acquainted with Joseph Persily?

Mr. EMSPAK: For the reasons I stated before, I answered it.

Mr. MOULDER: Then you refuse to answer the question?

Mr. EMSPAK: No. I answered it.

Mr. TAVENNER: Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK: I answered the question.

Mr. TAVENNER: Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER: The record will reveal that you have not answered the question.

Mr. EMSPAK: I have answered it to the best of my ability under the circumstances.

Mr. MOULDER: Any further questions?

Mr. TAVENNER: Yes. In what capacity is Joseph Persily associated with the UE at this time?

Mr. EMSPAK: It is the same question over again. I will give the same answer.

Mr. TAVENNER: Is he an organizer in the UE?

Mr. EMSPAK: Mr. Chairman, it is the same question.

Mr. TAVENNER: You refuse to answer that?

Mr. EMSPAK: I answered it.

Mr. TAVENNER: Are you acquainted with Albert Smith?

Mr. EMSPAK: The same answer applies to that.

Mr. TAVENNER: In other words, you are refusing to answer whether you are acquainted with him or not?

Mr. EMSPAK: I have answered the question as I see the answer.

Mr. TAVENNER: Is he employed by UE?

Mr. EMSPAK: Mr. Chairman, I answered the question.

Mr. MOULDER: Could you tell us who those people are, Mr. Counsel?

Mr. EMSPAK: Excuse me, please.

(Witness confers with his counsel.)

Mr. TAVENNER: Joseph Persily and Albert Smith are the two persons whose names were mentioned.

Mr. MOULDER: Who is Joseph Persily?

Mr. TAVENNER: I thought he was connected with the UE, but I am unable to understand from this witness what the connection is, if any.

Mr. MOULDER: Do our records reveal who he is?

Mr. TAVENNER: I do not know whether they do or not, Mr. Chairman.

Mr. Emspak, has Max Melford ever been connected with UE as a field organizer?

Mr. EMSPAK: Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee.

I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

Mr. MOULDER: Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

Mr. EMSPAK: No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——

Mr. MOULDER: Do you know them or not?

Mr. EMSPAK: That does not concern this committee at all.

Mr. MOULDER: Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. EMSPAK: No. I don't think this committee has a right to pry into my associations. That is my own position.

Mr. TAVENNER: Is Max Helford at the present time a field organizer for the UE?

Mr. EMSPAK: Mr. Chairman, that is a repetition of basically the same question, and the same answer stands.

Mr. TAVENNER: Was Phil Saba originally from local 155?

Mr. EMSPAK: I answered that question.

Mr. TAVENNER: And is he now a field organizer for the UE in district 1?

Mr. EMSPAK: I answered that question and that is the only answer I will give on any of my associations, for the reasons stated.

Mr. TAVENNER: Is Hank Rhine presently an international representative of the UE?

Mr. EMSPAK: Same answer.

Mr. TAVENNER: Is Jack Gorelick now affiliated with the UE?

Mr. EMSPAK: Same answer.

Mr. TAVENNER: Is Ernest Moyer a field organizer for UE in the Easton area?

Mr. EMSPAK: Same answer.

Mr. TAVENNER: Do you know James Lustig?

Mr. EMSPAK: Same answer.

Mr. TAVENNER: Is he an international representative of UE?

Mr. EMSPAK: We can go on endlessly like this, I suppose, but the same answer holds.

* * * * *

A report of the Committee was thereafter, on August 10, 1950, submitted to the House, reciting that petitioner had been called before the Committee and had refused to answer questions "pertinent to the subject under inquiry" (R. 275), which were set out verbatim, and concluding that he was therefore in contempt of the House of Representatives (R. 255-275, 240). The report was thereupon, by House Resolution of the same day, certified to the United States Attorney for the District of Columbia for appropriate action (R. 240).

At the conclusion of the trial, the judge, sitting without a jury, found petitioner guilty. He was sentenced to imprisonment for a period of six months and to pay a fine of $500 (R. 136-137).

On appeal, the judgment was affirmed by the

Court of Appeals sitting *en banc*. With respect to the issues presented by the petition for certiorari, the court was divided as follows: (1) All the members of the court, except Judges Bazelon and Edgerton, agreed (a) that it had not been shown that the grand jury was invalid, and (b) that insufficient data had been presented to require a hearing on the issue (R. 354-355).[4] Judges Bazelon and Edgerton thought that a hearing was called for on that issue (R. 364). (2) All of the court, except Judges Fahy, Bazelon and Edgerton, agreed that the Committee had made it sufficiently clear to the petitioner that he was required to answer the questions in indictment, and that no specific direction to answer, *in haec verba*, was required (R. 356-357, 362-363). The dissenting judges thought that, under the ruling in the companion *Quinn* case, a new trial was required to determine whether petitioner had been clearly advised that his objections to answering had been rejected and that he had been given another opportunity to answer (R. 363-364). Although agreeing that there was evidence to support a finding that petitioner had been so apprised, they thought that it was not clear that the trial judge had applied proper standards. (3) The

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[4] Judges Prettyman, Washington and Stephens, however, reached this conclusion because they thought that the record put it beyond doubt that "(1) * * * the charge before the grand jury was that [petitioner] refused to answer certain questions and (2) * * * that [petitioner] said that he had refused to answer those questions." There was thus "no indication that Government employees would not be suitable grand jurors in respect of the charge which was before them in this particular case" (R. 361).

same majority of the court, apparently, was also of the view that Emspak had not in fact claimed the privilege against self-incrimination, but had made his objections more broadly to the general activities of the Committee (R. 357-358). The dissenting judges did not pass on this question. (4) The opinions below did not discuss petitioner's contention here based on the First Amendment.

ARGUMENT

1. Petitioner's motion for a judgment of acquittal was based, *inter alia*, on the contention that "the evidence shows that defendant claimed his privilege against testifying under the Fifth Amendment" (R. 133).[5] The verdict of guilty by the trial judge thus represents a finding that petitioner failed to claim the privilege, either in express terms, or in language which could, in its context, have reasonably been so understood. That finding, concurred in by the court of appeals is, we submit, amply supported by the evidence.

Petitioner did not at any point in his extended remarks indicate by any form of words that he feared that an answer to any particular question would incriminate him. In fact, he specifically disavowed that his answers might tend to incriminate him, in the following language (R. 265):

> Mr. MOULDER: Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

[5] The contention was renewed in petitioner's motion for a new trial (R. 134-135).

Mr. EMSPAK: No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——

Mr. MOULDER: Do you know them or not?

Mr. EMSPAK: That does not concern this committee at all.

Mr. MOULDER: Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. EMSPAK: No; I don't think this committee has a right to pry into my associations. That is my own position.[6]

On repeated occasions throughout his testimony he made statements to the effect that the subcommittee had no right to pry into his associations. On those occasions when he did denote his failure to answer a particular question as a refusal, he addressed his objection to the whole inquiry and the authority of the subcommittee rather than to any specific propensities of the particular questions asked. Many of his remarks were, in substance, a castigation of the subcommittee for its past and present methods and motives. In short, although petitioner, an editor and official of standing in the union, who was represented by counsel, made extensive remarks obviously patterned and precon-

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[6] Whether this disclaimer of the privilege against self-incrimination be taken to apply to a single question, or be considered along with all the other statements of petitioner to relate to his failure to answer all sixty-eight questions, the final result is the same. Any one of the counts would suffice to support the judgment. *Sinclair* v. *United States*, 279 U.S. 263, 299.

ceived for the occasion, at no time during his questioning did he use the simple, familiar language which would have conveyed to the subcommittee, and to the court, that he feared that his answer to a particular question would incriminate him. On these facts, the trial court was amply justified in its conclusion that petitioner did not intend to claim the privilege.

Petitioner makes much of the fact that, at one stage of the proceeding while engaged in an extensive upbraiding of the subcommittee not directed at any particular question and in disregard of the fact that he was being asked questions while talking, he said (R. 168):

> Because of my interest in what is going on these days, because of the activities of this committee * * * because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

The trial court was amply justified in concluding, as it apparently did, that this was not intended as a claim of privilege as to any of the questions asked. Its context indicates that it was part of a speech the petitioner was determined to make regardless of what questions were asked, and that it was directed at the authority of the subcommittee to question him, rather than at the propensities of any particular question. The oblique reference to the Fifth Amendment could as well refer to the right to due process of law as to the privilege. The

privilege against self-incrimination is neither actually nor colloquially understood as a "supplement" to the First Amendment. Petitioner's general reference to the Fifth Amendment clearly did not suffice to put the subcommittee on notice that petitioner intended to assert his claim of privilege against self-incrimination as to all the questions.

Petitioner also asserts (Pet. 22-23) that his statement, when asked whether he knew certain officials, that the committee "presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution" represents a claim of privilege. But it was almost immediately thereafter that he was asked "Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?" to which he replied, "No. I don't think this committee has a right to pry into my associations. That is my own position." When later petitioner kept insisting that he was making the same answer, not only as to his association with other individuals, but as to his membership in the Communist Party, the committee would have been justified in assuming that he was not asserting a claim that his testimony would tend to incriminate him.

The claim of privilege must be addressed to a particular question and must assert specific grounds. See *United States* v. *Murdock*, 284 U. S. 141, 148, where this Court refused to consider a belated claim that a question, as to which the privilege had been claimed on the ground that it was

incriminating under state law, was also incriminating under federal law. It is not enough that a general objection be taken to the authority of the committee, or the materiality of a particular question asked. The privilege against self-incrimination must be asserted "upon that specific ground" (*United States* v. *Skinner,* 218 Fed. 870, 876 (S.D. N.Y.)), and the witness "* * * must say so in unmistakable language and give the reasons for shielding himself." *In re Knickerbocker Steamboat Co.,* 139 Fed. 713, 716 (S.D. N.Y.). See also *Vajtauer* v. *Commisioner,* 273 U.S. 103, 113. Petitioner's alleged assertion of the privilege clearly failed to meet the prescribed standard of clarity and specificity.

2. Petitioner concedes that the view of the majority of the court below is that a witness before a Congressional committee who raises an objection to a question must in some manner be clearly apprised that the objection has been rejected and the witness required to answer (Pet. 26-27).[7] He does not seriously press the contention that this must be done by the rigid formula of a specific direction to answer followed by another refusal. Thus the question on this phase of the case is whether the evidence is sufficient to justify the conclusion that petitioner's refusals to answer were in the face of his knowledge that his objections thereto had been rejected.

The affirmative answer to that question is clearly

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[7] That such was the view of the majority of the court clearly appears from its action in the related *Quinn* case in remanding for determination of such issue. 203 F. 2d 20.

established by a mere reading of the record of petitioner's appearance, the pertinent portion of which is set forth in the Statement, *supra*. Some of the questions asked (e.g. "Are you acquainted with Joseph Persily") were repeated over and over, only to be met with refusals to answer which petitioner refused to concede were refusals. There is nothing in this record which would support the view that petitioner's failure to answer stemmed from a belief that the committee had abandoned its unanswered question. Even the dissenting judges below agreed that "the record reveals matters which might be said to reflect an adverse ruling by the Committee on the appellant's objections" (R. 364). The finding, implicit in the verdict by the trial court, that petitioner's refusal was deliberate, was so clearly required by the evidence that the majority of the court below properly found that there was no occasion to remand the cause.

3. Petitioner moved to dismiss the indictment on a summary affidavit of his attorney to the effect that the prevailing atmosphere in Washington at the time the indictment against him was returned was such that the 10 grand jurors who were Government employees, and the two who were wives of Government employees, could not have decided impartially whether or not a person in petitioner's circumstances should be indicted (R. 25-28, 85-96).[8]

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[8] Rule 6(b)(2) of the Federal Rules of Criminal Procedure provides:

> A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the

This was in turn supported by newspaper clippings showing the unsworn views of nine persons, mostly columnists, which appeared principally in 1947,[9] some of which were to the effect that the Government loyalty program was creating doubts and fears among Government employees (R. 97-114). It was, and is, then urged that this showing, under the recent ruling of this Court in *Dennis* v. *United States,* 339 U. S. 162, required either dismissal of the indictment, or a hearing on the issue of bias.

In the *Dennis* case, this Court rejected the contention that the mere fact of the existence of the President's Loyalty Order (Executive Order 9835) was sufficient to establish such bias through fear as would disqualify Government employees from service on a petit jury on a trial of a known Communist indicted for contempt of the House Committee on Un-American activities. Petitioner, whose attack goes to a grand rather than a petit jury, has made no greater showing here.

The data submitted show that the President's Loyalty Order of 1947 required official consideration whether large numbers of present and prospective Government employees had "affiliation" or "sympathetic association with" groups designated by the Attorney General as "totalitarian, fascist, communist, or subversive * * *." As a result of this order, of investigations conducted pursuant to

---

ground that one or more members of the grand jury were not legally qualified if it appears * * * that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

[9] Six of the nine articles appeared in 1947; one, in 1948; and two, in 1949.

its standards, and of the serious consequences of malicious and irresponsible accusation, it is said to have become apparent "that the only way that a government employee could possibly hope to safeguard his livelihood and the security of himself and his family was to express a hostility to any person, idea, or activity which could in any way possibly be construed to be of a 'Communist' character" (R. 91-92).

The data further allege that in specific instances judges were censured by individual members of Congress for conduct which was construed by those members of Congress to be too favorable to persons they believed to be Communists (R. 88). In further support of his motion, petitioner attached eight newspaper clippings which apparently reflected the view of some members of the press that the loyalty program was having deleterious effects on the morale of Government workers, encouraging the employment of loyal "dolts" (R. 102-103), and, in some instances, permitting malicious persons to make irresponsible allegations of disloyalty (R. 105-107).[10]

This showing does not suffice to meet the standards for showing bias which were required by the *Dennis* case. The loyalty order on which petitioner here relies was in effect at the time of the *Dennis* trial. It is true that the loyalty program had been

---

[10] As we pointed out, *supra*, all of these antedated the grand jury in question here, some by as much as three years. Petitioner did not attempt to assay whether the passage of time, in this era of the investigation, made Washington grand jurors more or less sophisticated with respect to unproved charges.

in force longer at the time of the present petitioner's trial than it had been at the time of the *Dennis* trial, and that therefore the objection that Dennis' complaint required the Court to speculate as to what would happen in pursuance of the order is no longer present. But that rather emphasizes that petitioner cannot show that it has had the consequences which this Court has indicated would alone justify any interference on its part. Thus there is lacking here what the Court emphasized was lacking in *Dennis,* 339 U. S. at 168.

> * * * [There was no] evidence which would indicate that investigatory agencies of the Government had recognized in the past or would take cognizance in the future of a vote of acquittal * * *. Nor was there evidence with respect to the existence of a climate of opinion among Government employees that they would jeopardize their tenure or provoke investigation by such a verdict.

Moreover, we think it is clear that the considerations which apply in determining the question of the bias of petit jurors do not necessarily apply to the same extent to a claim of impartiality of individual grand jurors. It must be remembered that "an indictment is, after all, no more than an accusation." *Swan,* Ch. J., in *United States* v. *Remington,* 191 F. 2d 246, 252 (C.A. 2). The absence from normal grand jury process of *voir dire* examination, the best single guarantee that bias will be detected, indicates the basic differences between the two

kinds of jury. The recent cases in which indictments have been invalidated because of defects in the methods of choosing grand jurors have all involved systematic exclusion from the panel of a class of persons, such as women, Negroes, and wage earners. See, e.g., *Ballard* v. *United States*, 329 U.S. 187; *Thiel* v. *Southern Pacific Co.*, 328 U.S. 217. But there is a difference between a decision that a grand jury which is not representative because of the basis of selection is not a proper grand jury and a decision that particular grand jurors, generally qualified, are not qualified to return an indictment in a particular case. The fact that a particular grand jury must pass on a whole gamut of cases, ranging widely over many kinds of accused and many kinds of issues, means that if the arguments advanced here prevail, the courts will become immersed in assessing all sorts of claims that, with respect to a particular defendant, the grand jury through fear or bias did not act freely or impartially. At the very least, we suggest, the courts cannot be drawn into that kind of an inquiry on the basis of the vague and speculative showing here made.

More particularly, as the opinion of Judge Prettyman points out, the vague showing made by petitioner is no justification for the judicial fishing expedition sought, in view of the narrow scope of the offense and the clear evidence of violation. Even as petitioner concedes the facts, there clearly was a proper basis for indictment, i.e., a *prima facie* showing that petitioner had refused to answer per-

tinent questions. The subtler considerations as to a possible claim of privilege or the meaning of refusal to answer are obviously not the kind of questions which a grand jury would be called upon to decide. There is thus no basis for a claim of prejudice on the grounds alleged.

4. Finally, petitioner contends that his conviction violates the First Amendment. It is, however, a little difficult to see how a disclosure by an officer in a union that he knows or does not know certain people, who apparently are also officers in that union, or a disclosure of what their jobs in the union are, can be a disclosure of political belief, allegedly protected from legislative inquiry by the First Amendment. As this conviction can stand if only one count is sound, this is a sufficient answer to the whole point.

In any event, it is clear that possible Communist infiltration into a national union of major importance in a nation-wide industry which has large numbers of defense contracts, and the further possibility that that union's officials are permitted access to plants without normal security checks, is an appropriate area for Congressional concern. And it is equally clear that the House Resolution authorizes the Committee on Un-American Activities to undertake this investigation. Compare *United States* v. *Rumely*, 345 U.S. 41, with instant resolution at pp. 5-6, *supra*. This Court has held that, within the limitations of the First Amendment, Congress may constitutionally require leaders of labor unions, which invoke the benefits of the Fed-

eral Labor Management Relations Act, to disclaim under oath their membership in the Communist Party. *American Communications Association* v. *Douds*, 339 U.S. 382. Clearly, therefore, Congress may constitutionally inquire into the Communist membership of leaders of a particular union who are believed to have access to significant defense information.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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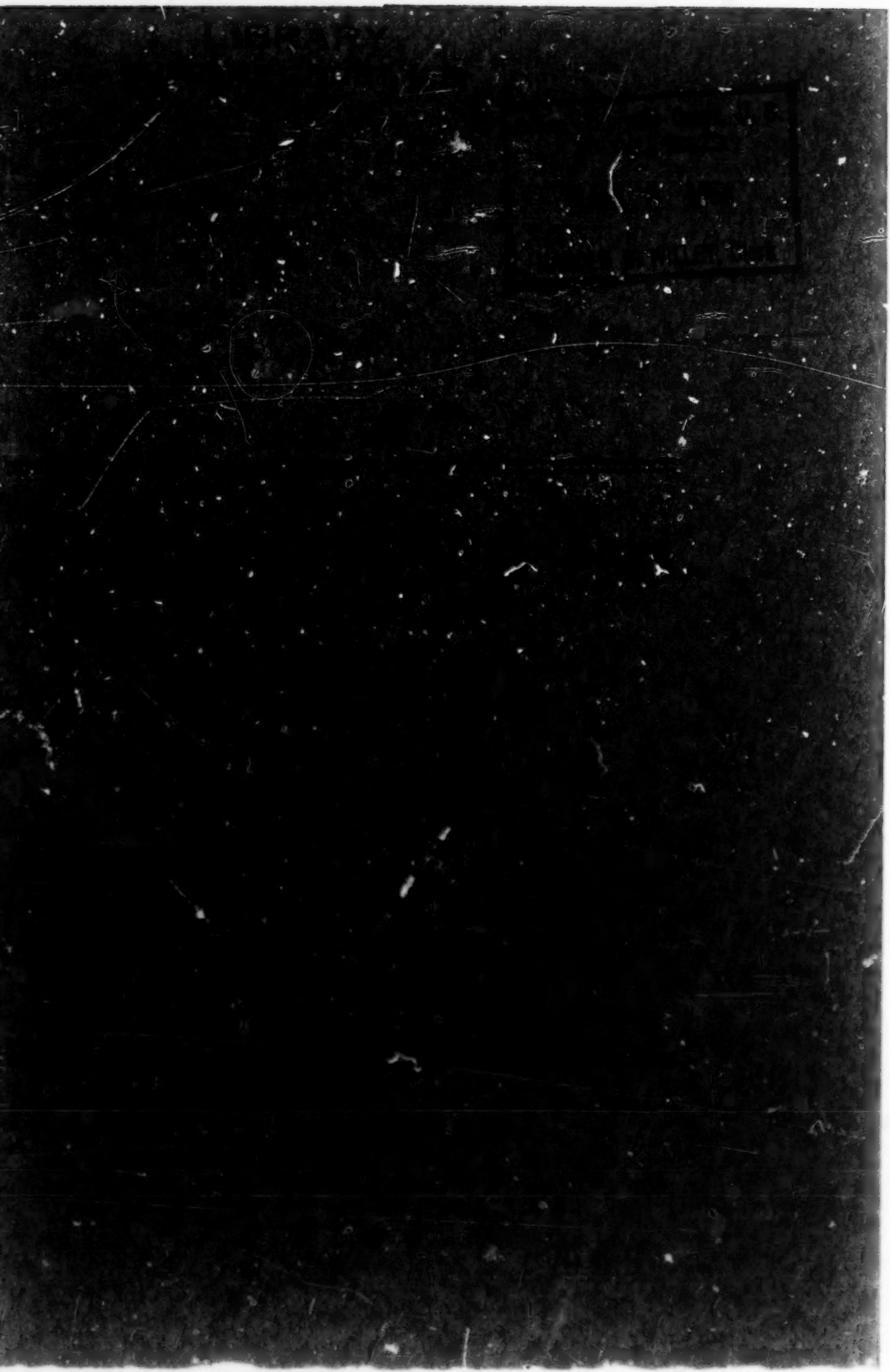

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 67

JULIUS EMSPAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 352–363) is reported at 203 F. 2d 54. The opinions of the District Court denying petitioner's motions to dismiss the indictment (R. 116–119, 119–131) are reported at 95 F. Supp. 1010, 1012. The opinion of the District Court at the close of the trial (R. 224–227) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 19, 1952 (R. 363). A peti-

tion for rehearing was denied on April 13, 1953 (R. 371). The petition for a writ of certiorari was filed on May 13, 1953, and granted on October 12, 1953 (R. 371–372). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence supports the conclusion reached by the district court, and sustained by the court of appeals, that petitioner's refusal to answer certain questions put to him by a subcommittee of the House Committee on Un-American Activities was not based on a claim of privilege against self-incrimination.

2. Whether a conviction for refusal to answer questions asked by a Congressional committee cannot be sustained unless it is shown that the witness was specifically directed to answer the questions involved, or whether it suffices to show that the witness understood that the "answers" made by him were regarded by the committee as a refusal to answer, that the grounds asserted by him as a basis for such refusal to answer were clearly rejected by the committee, and that he was expected to answer the questions.

3. Whether the questions asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and if so, whether that Resolution, as

so construed, is unconstitutional, in that (a) it exceeds the investigatory or legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment.[1]

STATUTE AND RESOLUTION INVOLVED

2 U. S. C. 192, R. S. 102, as amended, provides as follows:

> Refusal of witness to testify.
>
> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

---

[1] Petitioner's brief also raises broad questions as to the constitutionality of the Resolution as generally applied by the Committee in other situations. Although, in the Government's view, such questions are not presented by the record in this case and hence are not properly before the Court, they are discussed *infra*, pp. 77–110.

Rule XI of the Rules of the House of Representatives, as amended by Section 121 (b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 812, 823, 828, and thereafter adopted by the House of Representatives (H. Res. No. 5, 81st Cong., 1st sess., 95 Cong. Rec. 10–11) provides:

RULE XI

POWERS & DUTIES OF COMMITTEES

(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively:
* * *

* * * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

STATEMENT

On November 20, 1950, the petitioner, Julius Emspak, was indicted by a grand jury of the United States District Court for the District of Columbia for having wilfully refused to answer 68 questions before a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives, in violation of the provisions of 2 U. S. C. 192 (*supra*, p. 3), which provides, *inter alia*, that a witness summoned be-

fore a committee of Congress who refuses to answer "any question pertinent to the question under inquiry" shall be guilty of a misdemeanor (R. 4–13).

He pleaded not guilty (R. 13–14), and made various motions to dismiss the indictment (R. 14–17), all of which were overruled by the trial court. See R. 116–119, 119–131, 95 F. Supp. 1010, 1012. Later, on the trial of the case, the following was stipulated or shown:

The petitioner was summoned by the Committee to appear as a witness at a series of hearings conducted in August and December of 1949. According to the Committee counsel, the purpose of the hearings was to investigate into "the infiltration of Communist labor unions working on defense projects, from the standpoint of individuals who weren't actually working in the plant but who were officials of the union, as distinguished from those who had actual contact with classified material." (R. 157.) The hearing to which the petitioner was called, the counsel also testified, "was set up for the particular purpose of developing the practices and duties of various officials of the national organization of UE[2] with the idea of determining whether or not there was a difference in practice, in certain Government agencies, in screening or clearing officials of the union for security purposes in plants where the Atomic

[2] United Electrical, Radio, and Machine Workers of America.

Energy Commission, or the Army, Navy, and Air Force, were having secret Government projects worked upon" (R. 157).[3]

[3] The exact language of the Committee counsel at the hearings does not appear in the record. It does appear in the published Committee hearings. Hearings, House Committee on Un-American Activities, 81st Cong., Hearings Regarding Communist Infiltration of Labor Unions, pp. 541–542. The Committee counsel there stated at the opening of the hearings:

> Mr. TAVENNER. Mr. Chairman, the purpose of this hearing is to inquire into the question of Communist affiliation or association of certain members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense.
>
> The advisability of recommending legislation providing for security standards, and the advisability of tightening present security requirements in industrial plants working on certain Government contracts, was considered by the committee in both its open and executive sessions on June 6, 1949, as a result of the testimony of Leona and Joseph Franey and Loren G. Haas.
>
> It will be remembered that Mr. Wood, the chairman of this committee, offered H. R. 3903, section 2 of which would make it an offense for any individual employed in connection with the performance of any national defense contract "(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General; (2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or (3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1) or (2) of

The authority of the Committee to conduct investigations and to subpoena witnesses in connection therewith depends on House Rule XI (q) (*supra*, pp. 4–5), the crucial language of which authorizes the Committee on Un-American Activities to make, from time to time—

> * * * as a whole or by subcommittee * * * investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Pursuant to the Committee's subpoena, petitioner, who was general secretary and an ex-officio member of the Executive Committee of UE, appeared before a subcommittee of the Committee on December 5, 1949 (R. 239, 159) at which time

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this section." This bill was referred to this committee.

It is the further purpose of this hearing to develop facts for the committee's consideration in connection with this resolution.

* * * * *

It does not appear that petitioner was present on this particular day of the hearings, although it does appear that petitioner was following, at least, the press reports as to the activities of the Committee (R. 171).

he was asked a number of questions, for the most part related to the structure and activities of the United Electrical, Radio, and Machine Workers of America (hereinafter called UE) and to his activities as editor of the UE News, the journal of the union (see R. 159–199, 37).

These questions petitioner answered. But to sixty-eight of the questions asked him by the subcommittee, he made responses which the Committee did not regard as answers. Fifty-eight of these questions asked in substance that he state whether or not he knew certain named individuals and could disclose whether or not those individuals presently held or had held certain positions in the UE (R. 5–12).[4] Eight of the questions related to petitioner's possible membership in the Communist Party, present or past, and to various evidences of that membership (R. 12–13); and the other two asked about his "affiliation" with the National Federation for Constitutional Liberties and his "association" with the Civil Rights Congress (R. 12).[5]

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[4] Petitioner showed by affidavit, in support of his motion to dismiss the indictment, that 17 out of the 50 persons about whom he was questioned, and refused to answer, had been charged before a Congressional committee as having Communist and Communist-front affiliations (R. 67–85); and that the UE itself was thought to be Communist dominated (R. 51–56).

[5] As to these questions, petitioner showed by various documents introduced in support of his motion to dismiss the indictment that he had been charged with being a Communist (R. 29–36, 47–49, 50). He also stated that the two named

Petitioner's refusal to answer these questions, which he now contends was based on a claim of privilege against self-incrimination, but which he then claimed was not a refusal at all, may be illustrated by the questions and answers to some of the earlier questions, since the later answers were in general a reference to the earlier ones. The relevant colloquy follows (R. 167–173):

> Mr. TAVENNER [Committee Counsel]. Mr. Emspak, are you acquainted with Joseph Persily?
>
> Mr. EMSPAK. Mr. Chairman, I would like to say something at this point.
>
> Mr. MOULDER [Subcommittee Chairman]. You mean in response to the question?
>
> Mr. EMSPAK. I will answer the question; yes, in response to the question and as a statement of position.
>
> * * * * *
>
> As an individual, I would like to say one thing, and that is this: The line of questioning that counsel is developing now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am—
>
> * * * * *

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organizations had been said to be Communist front groups (R. 32).

* * * I owe to the rich heritage and tradition of this country. I do not believe that a committee of this kind, especially in view of the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country, too.

Mr. MOULDER. I want to give you full opportunity to express yourself in answer to the question, but you are making an oration now.

Mr. EMSPAK. It is not an oration. It happens to be a very profound personal feeling.

Mr. MOULDER. What is the question?

Mr. TAVENNER. The question is: Are you acquainted with Joseph Persily.

* * * * *

Mr. EMSPAK. Because I have a stake in this country—

Mr. MOULDER. You are not answering the question. He asked you if you are acquainted with this man.

Mr. EMSPAK. I will answer it.

Mr. MOULDER. Are you or not?

Mr. EMSPAK. I was on the verge of answering it.

Mr. MOULDER. If you have any explanation to make you will be permitted to do so after you answer the question.

Mr. EMSPAK. Because of my interest in what is going on these days, because of the activities of this committee—

Mr. MOULDER. Are you going to answer the question?

Mr. EMSPAK. Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

Mr. MOULDER. Do you think it corrupts you to answer the question?

Mr. EMSPAK. I certainly do.

Mr. MOULDER. Why does it corrupt you?

Mr. EMSPAK. Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country.

Mr. MOULDER. You are not going to take over this committee.

Mr. EMSPAK. I don't want to.

Mr. MOULDER. And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

Mr. TAVENNER. Are you acquainted with Joseph Persily?

Mr. EMSPAK. For the reasons I stated before, I answered it.

Mr. MOULDER. Then you refuse to answer the question?

Mr. EMSPAK. No. I answered it.

Mr. TAVENNER. Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER. The record will reveal that you have not answered the question.

Mr. EMSPAK. I have answered it to the best of my ability under the circumstances.

Mr. MOULDER. Any further questions?

Mr. TAVENNER. Yes. In what capacity is Joseph Persily associated with the UE at this time?

Mr. EMSPAK. It is the same question over again. I will give the same answer.

Mr. TAVENNER. Is he an organizer in the UE?

Mr. EMSPAK. Mr. Chairman, it is the same question.

Mr. TAVENNER. You refuse to answer that?

Mr. EMSPAK. I answered it.

Mr. TAVENNER. Are you acquainted with Albert Smith?

Mr. EMSPAK. The same answer applies to that.

Mr. TAVENNER. In other words, you are refusing to answer whether you are acquainted with him or not?

Mr. EMSPAK. I have answered the question as I see the answer.

Mr. TAVENNER. Is he employed by UE?

Mr. EMSPAK. Mr. Chairman, I answered the question.

Mr. MOULDER. Could you tell us who these people are, Mr. Counsel?

Mr. EMSPAK. Excuse me, please.

(Witness confers with his counsel.)

Mr. TAVENNER. Joseph Persily and Albert Smith are the two persons whose names were mentioned.

Mr. MOULDER. Who is Joseph Persily?

Mr. TAVENNER. I thought he was connected with the UE, but I am unable to understand from this witness what the connection is, if any.

Mr. MOULDER. Do our records reveal who he is?

Mr. TAVENNER. I do not know whether they do or not, Mr. Chairman.

Mr. Emspak, has Max Helford ever been connected with the UE as a field organizer?

Mr. EMSPAK. Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to

perhaps frame people for possible criminal prosecution.

I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee. I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

Mr. MOULDER. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

Mr. EMSPAK. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——

Mr. MOULDER. Do you know them or not?

Mr. EMSPAK. That does not concern this committee at all.

Mr. MOULDER. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. EMSPAK. No, I don't think this committee has a right to pry into my associations. That is my own position.

Mr. TAVENNER. Is Max Helford at the present time a field organizer for the UE?

Mr. EMSPAK. Mr. Chairman, that is repetition of basically the same question, and the same answer stands.

Mr. TAVENNER. Was Phil Saba originally from local 155?

Mr. EMSPAK. I answered that question.

Mr. TAVENNER. And is he now a field organizer for the UE in district 1?

Mr. EMSPAK. I answered that question and that is the only answer I will give on any of my associations, for the reasons stated.

Mr. TAVENNER. Is Hank Rhine presently an international representative of the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Jack Gorelick now affiliated with the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Ernest Moye[illegible] a field organizer for UE in the Eastern area?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Do you know James Lustig?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is he an international representative of UE?

Mr. EMSPAK. We can go on endlessly like this, I suppose, but the same answer holds.

* * * * *

Similar questions followed, to most of which titioner responded by saying "Same answer." one point in the colloquy, the following ocrred (R. 174):

Mr. TAVENNER. Is Louis I. Sorti a field organizer of the UE?

Mr. EMSPAK. Same answer.

Mr. MOULDER. Same answer is your refusal to answer for the reasons given?

Mr. EMSPAK. I gave specific reasons why I felt I should not participate in this kind of questioning, and I stand by that.

And at a later point, the following occurred (R. 178):

Mr. TAVENNER. Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?

Mr. EMSPAK. I answered that, Mr. Chairman.

* * * * *

Mr. MOULDER. You mean you refuse to answer for the reasons previously stated?

Mr. EMSPAK. I answered it in the terms I did when I said as far as my associations and affiliations are concerned, that is something a committee of this kind should not pry into.

And, at another point in the later colloquy, the following occurred (R. 194):

Mr. TAVENNER. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York?

Mr. EMSPAK. I answered that.

Mr. MOULDER. You mean you refuse to answer for the reasons you gave at the beginning?

> Mr. EMSPAK. That is correct. I answered the best way I know how.

A report of the Committee was thereafter, on August 10, 1950, submitted to the House, reciting that petitioner had been called before the Committee and had refused to answer questions "pertinent to the subject under inquiry" (R. 275), which were set out verbatim, and concluding that he was therefore in contempt of the House of Representatives (R. 255–275, 240). The report was thereupon, by House Resolution of the same day, certified to the United States Attorney for the District of Columbia for appropriate action (R. 240).

At the conclusion of the trial, the judge, sitting without a jury, found petitioner guilty, specifically stating that "I find nothing in the record which indicates that the [petitioner] entertained the slightest fear or apprehension of federal prosecution" (R. 225); that "The [petitioner] failed to assert that right [the privilege against self-incrimination] and revealed no such apprehension" (R. 227); and otherwise made a general finding of guilty. Petitioner was thereupon sentenced to imprisonment for a period of six months and to pay a fine of $500 (R. 136–137).

On appeal, the judgment was affirmed by the Court of Appeals, sitting *en banc*. With respect to the issues presented by the grant of certiorari, the court was divided as follows: (1) Six mem-

bers of the court were of the view that petitioner had not in fact claimed the privilege against self-incrimination, but had made his objections more broadly to the general activities of the Committee (R. 356–357). Judges Fahy, Bazelon, and Edgerton took no position on this issue. (2) Three of the members of the court who voted to sustain the conviction were of the view that the Committee had made it sufficiently clear to the petitioner that he was required to answer the questions in the indictment, and that no specific direction to answer, *in haec verba*, was required (R. 361). The three remaining members of the majority were of the view that the conviction could be sustained if the petitioner merely refused to answer a proper question (R. 355–356). The dissenting judges thought that, under the ruling in the companion *Quinn* case,[6] a new trial was required for a determination by the District Court whether petitioner had been clearly advised that his objections to answering had been rejected and that he had been given another opportunity to answer (R. 361–363). Although agreeing that there was evidence to support a finding that petitioner had been so advised, they thought that it was not clear that the trial judge had applied proper standards. (3) The validity of the Committee was expressly considered and upheld by three

[6] *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), pending before this Court on petition for certiorari, No. 66, O. T. 1953.

of the members of the court who voted to sustain the conviction (R. 354). The other three who voted to sustain the conviction necessarily agreed, although their concurring opinion does not discuss the point (*cf.* R. 361). Judge Fahy also concurred "with respect to * * * the validity of the subcommittee" (R. 361). It is not clear that Judge Bazelon's opinion reaches the issue (see R. 361–362).

SUMMARY OF ARGUMENT

I

A. Although petitioner contends that he claimed the privilege against self-incrimination in response to the questions in this case, the fact is that he made it clear to the Committee that his only basis for refusing to answer was his view that the Committee had no right to inquire into his political beliefs, affiliations, or associations. He did not, at any time during the extended colloquy in which he expounded his view, indicate by any form of words that he feared that an answer to any particular question would tend to criminate him; and, indeed, he specificially disavowed any such claim. The fact that petitioner made some statements which, in another context, might have been, at best, consistent with a claim of privilege, cannot be permitted to obscure the overriding fact that he never claimed or intended to claim the privilege.

In any event, the question whether petitioner claimed the privilege against self-incrimination

as the basis for refusing to answer the questions asked him is one of fact. That question has been resolved against him by the trial court which considered the evidence, and by the Court of Appeals which reviewed the case. Their conclusions are, we submit, amply supported by the evidence.

B. Inasmuch as petitioner did not claim the privilege before the Committee, he cannot claim it now. For the privilege against self-incrimination cannot be relied on unless it is specifically claimed, and a general objection to the question will not suffice. *United States* v. *Murdock,* 284 U. S. 141, 148. The fact is that the privilege, however deeply rooted, is an exception to the general obligation to testify, and therefore must be interpreted, with that obligation in mind. One who would claim the privilege must do so clearly.

II

A. Petitioner also contends that his conviction cannot be sustained because it was not made clear to him by the Committee that, despite his objections to the questions, he was being required to answer. The record of the hearings, however, amply justifies the conclusion reached by the Committee, the trial court, and the Court of Appeals, that petitioner refused to answer the questions—even though he knew that his objections had been rejected and that he was being required to answer.

The record shows, indeed, that he conceded that he was refusing to answer the questions.

B. Petitioner further contends that, even if the record would support this conclusion, his conviction should nonetheless be reversed because there was no finding in the District Court that he refused to answer. There was, however, a general finding of guilt. As there was no request for special findings (see F. R. Crim. P. Rule 23 (c)), this was sufficient if the supporting evidence was sufficient. Moreover, examination of the trial judge's opinion shows that he was, in fact, satisfied that there had been a refusal to testify. It shows also that there is no basis for accepting the conclusion of the dissent below that he did not reach this conclusion on a "correct view of the governing principles."

III

The petitioner's major contention is that the Resolution constituting the Committee on Un-American Activities is unconstitutionally vague. On this aspect of the case, the Government takes the position that only two questions are properly before the Court: (1) whether the questions which were asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and (2) if so, whether the Resolution as so construed is unconstitutional in that (a) it exceeds the investigatory

and legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment. In our view, the questions raised by petitioner which go beyond these are not properly before the Court.

A. The questions which were asked petitioner clearly come within the scope of the Committee's authority. The express purpose of the inquiry was to investigate into Communist infiltration into defense industries in connection with the recommendation of legislation on this subject. This inquiry comes within the language of the Resolution granting the Committee its authority. For that resolution authorized investigation into "the extent, character, and objects of un-American propaganda activities in the United States" and "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *." It is clear, at the very least, that this covers Communism and Communist propaganda. It is clear also that it covers such other Communist activities as are integrally related to such propaganda. Considerable evidence has long been available to Congress of the use by the Communist Party of propaganda not only to create a following for their views, but also to develop leads for espionage

and sabotage purposes. All of these activities are obviously propaganda activities, or, at the very least, a measure of the diffusion or the extent, character, and objects of such propaganda. Moreover, even if there were doubt as to this interpretation, it has been removed by Congressional approval of the Committee's continuance in spite of knowledge that the Committee had thus interpreted the Resolution.

The questions which petitioner refused to answer were within the scope of the inquiry. Since the subject matter of the inquiry related to legislation controlling the employment of Communists in war plants and the encouragement of those already working in such plants to join or support the Communist Party or its fronts, there would seem to be no doubt that questions whose purpose was obviously to develop information about the manner in which the Communist Party made its influence on UE effective, were pertinent.

B. As thus applied to the factual situation presented by this case, it is clear that the Resolution is constitutional.

1. We emphasize, at the outset, that the only constitutional questions which are properly before the Court are those which relate to the particular questions which petitioner was asked, and to that construction of the Resolution which authorizes those questions. Petitioner's attempt to have this Court decide questions not presented

by this record, relating to other aspects of the Resolution, other witnesses, other questions, and other proceedings, is misconceived.

This Court has repeatedly said that it will not pass on issues of legislative validity until they come before it inescapably, in concrete form, with the factual background and record appropriate for decision of the Concrete question. The Court neither renders advisory opinions nor declares general constitutional doctrines unrelated to the setting of a particular case. Cf. *United States* v. *Rumely*, 345 U. S. 41. The same principle has been stated with somewhat different emphasis when this Court has insisted that a complainant has standing to challenge the validity of legislative acts only as they affect him directly. He cannot insist on the rights of others, whether their cases be actual or hypothetical. Or, in still another fashion, even if the Resolution might be applied in an unconstitutional manner, such an application could be separated out, leaving the constitutional applications.

2. It is clear that the Committee had the power, consistent with the First and Fifth Amendments, to ask the questions here involved. Congress, and its committees, may investigate fully in relation to possible legislation. So far as the investigation relates to the investigation of Communist propaganda activities, there is no vagueness. So far as the questions asked relate to the network of leadership within a national union suspected

of being Communist dominated, the First Amendment does not present a limitation. An officer of a union accepting public responsibilities with respect to the affairs of the union cannot contend that all information with respect to the persons who are officers of the union is privileged as a "political association". Moreover, this Court's decisions make it clear, in any event, that Communist Party activities are not ordinary political associations, and may, in the interest of national security, be examined into.

C. The Resolution, on its face, is constitutional, even if one goes beyond the confines of this case.

1. The Resolution on its face is reasonably definite. In the first place, there would seem to be no requirement of definiteness between Congress and its committees, as custom and practice demonstrate. Indeed, in view of the fact that a major purpose and function of the assignment of Congressional business to committees is to create a ready source of intelligence with respect to legislative activity, and to relieve Congress of the burden of overlapping and numerous committee assignments, it is clear that it would impose an intolerable burden on Congress if this Court were to hold that standing committee resolutions must meet normal criteria of definiteness.

The argument that, nonetheless, the Resolution must meet criminal statute standards of definiteness, is based on the view that the Resolution and

the criminal statute (2 U. S. C. 192) must be read together as an integrated criminal law. This is not sound. A witness who appears before a Congressional committee can be advised as to the matter under inquiry so as to determine the pertinence of a question irrespective of the generality of the Resolution establishing the Committee. Here, for example, the purposes of this particular investigation were a matter of public record.

But even if there are requirements of definiteness with respect to the resolution itself, the test would have to be a broad one, not the test applicable to criminal statutes. Just as in the case of criminal prosecution for violation of administrative regulations, it is the regulation which is tested for specificity, not the general standard. Compare, *e. g., Boyce Motor Lines* v. *United States,* 342 U. S. 337.

The Resolution here is sufficiently definite, by either standard. While, considered in isolation, some of its words may not have precise meanings, there can be little question that they are calculated to authorize the Committee to seek information concerning propaganda activities of groups which seek by illegal means to undermine the government of the United States. Thus, whether the petitioner adverted to the announced purpose of the inquiry or to the Resolution itself, he could tell that the questions asked him

were pertinent and that there was a meaningful area of investigation open to the Committee.

2. The Resolution on its face as thus construed does not violate the First Amendment. We have shown that in so far as the Resolution applies to Communist activities it is clearly constitutional. We further submit that as the Resolution is reasonably to be interpreted it is designed to authorize at least an investigation into the same kinds of evils which Communist propaganda and propaganda activities engender and represent. In our view, "subversive" and "un-American" "propaganda" and "propaganda activities" clearly comprehend Communist propaganda activities. Accordingly, the Resolution does not violate the First Amendment.

The fact that the Resolution may authorize an investigation into both illegal advocacy and speech which Congress may not constitutionally proscribe does not render the Resolution unconstitutional. For surely Congress may authorize one of its committees to investigate as to where it should and may attempt to draw the line between the legal and the illegal. This is particularly clear in view of the fact that legislation has in fact been both proposed and enacted in the field covered by the Resolution.

Moreover, even if there are indirect effects of the Committee inquiry—sanctions of public opinion on those brought before the Committee—

there would not be any violation of the First Amendment. First Amendment rights are not absolute. They do not preclude compelling testimony, even though there are collateral consequences to the witness. The need for first hand information as a basis for governmental action outweighs the interference with personal rights resulting from compelled disclosures. Particularly is this so where the disclosure sought is of the *ad hoc* nature involved here, and where the Court has already sustained the importance of dealing with various aspects of the problem posed by subversive propaganda and related activities.

The premise of petitioner's argument is that the "right to silence" is protected by the First Amendment. But the First Amendment does not create any such right. Even if it is accepted that disclosures before the Committee result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable reaction to the expression of their views, the First Amendment is in no way violated.

D. The fact that one of the objects of the Committee may have been to expose and publicize subversive and un-American activity neither invalidates the Resolution nor the Committee's action in this case. In the first place, the existence of an intent to combat subversive activity by publicity does not mean that the inquiry is not also in aid of legislation. These purposes are not in-

consistent. This Court has rejected similar attacks upon Congressional committees. *McGrain* v. *Daugherty,* 273 U. S. 135; *Sinclair* v. *United States,* 279 U. S. 263. On this phase of the case, all that is necessary to sustain the Resolution and the Committee's action is the fact that at least one of the purposes of the inquiry was to assist in the recommendation or adoption of legislation.

Furthermore, the "informing function" of Congress, in itself, suffices to support the Committee's action, even if the sole purpose here were to expose subversive activity. It is clear, for example, that Congress, in the exercise of its regulatory power, may authorize an administrative agency to receive and publicize information. *Electric Bond & Share Co.* v. *Securities & Exchange Commission,* 303 U. S. 419. And this method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. We think it clear that the Constitution does not deny Congress the power to use its own investigative authority directly to accomplish the same end, nor to adopt a program of publicity and disclosure as a public safeguard against subversive propaganda which Congress does not wish to and perhaps cannot prohibit.

ARGUMENT

I

PETITIONER'S CONVICTION FOR REFUSING TO ANSWER QUESTIONS PUT TO HIM BY A SUBCOMMITTEE OF THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES DID NOT VIOLATE HIS PRIVILEGE AGAINST SELF-INCRIMINATION, BECAUSE PETITIONER DID NOT CLAIM THAT PRIVILEGE

A. PETITIONER SPECIFICALLY DISCLAIMED ANY RELIANCE ON THE PRIVILEGE AGAINST SELF-INCRIMINATION

Petitioner's first contention is that he claimed the privilege against self-incrimination in response to the questions in issue in this case; and that since the claim was proper, he cannot be convicted for refusal to answer. The verdict of guilty by the trial judge followed an explicit finding that petitioner did not claim the privilege, either in express terms, or in language which could, in its context, have reasonably been so understood; and, indeed, that petitioner specifically disavowed any such fear of incrimination (R. 225–227, quoted *supra,* p. 18). That finding, concurred in by the Court of Appeals (R. 356–357) is, we submit, amply supported by the evidence.

Petitioner did not at any point in his extended colloquy with the Committee indicate by any form of words that he feared that an answer to any

particular question would incriminate him. In fact, he specifically disavowed that his answers might tend to incriminate him, in the following language (R. 172):

> Mr. MOULDER. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?
>
> Mr. EMSPAK. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——
>
> Mr. MOULDER. Do you know them or not?
>
> Mr. EMSPAK. That does not concern this committee at all.
>
> Mr. MOULDER. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?
>
> Mr. EMSPAK. No; I don't think this committee has a right to pry into my associations. That is my own position.[7]

On repeated occasions throughout his testimony petitioner made statements to the effect that the Committee had no right to pry into his associations, which seems clearly to have been his basis, at that time, for not answering the Committee's

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[7] Whether this disclaimer of the privilege against self-incrimination be taken to apply to a single question, or be considered along with all the other statements of petitioner to relate to his failure to answer all sixty-eight questions (as we contend it should be), the final result is the same. Any one of the counts would suffice to support the judgment. *Sinclair* v. *United States*, 279 U. S. 263, 299.

questions (R. 168, 172, 178, 179). He consistently addressed his objection to the whole inquiry and the authority of the Committee, and not to any specific incriminating propensities of the particular questions asked (R. 172, 174, 178); many of his remarks were, in substance, simply a castigation of the Committee for its past and present activities (R. 169, 172, 192, 194). In short, although petitioner, an editor and official of long standing in the union, represented by counsel, made extensive remarks apparently patterned and preconceived for the occasion,[8] at no time during his questioning did he use the simple, familiar words which would have clearly and unambiguously conveyed to the Committee, and to the court, that he feared that his answer to a particular question would incriminate him. Indeed, he seems fairly carefully to have avoided the use of such language, although he makes, and has made, no claim that this verbal formula is or was unknown to him. In these circumstances, the trial court was amply justified in its conclusion that petitioner did not intend to claim the privilege.

Petitioner makes much of the fact that, at one stage of the proceeding while engaged in an extensive upbraiding of the Committee not directed at any particular question and in disregard of the

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[8] Very similar language was used by other witnesses in the same investigation. See *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), and *Bart* v. *United States*, 203 F. 2d 45 (C. A. D. C.), both pending on certiorari before this Court.

fact that he was being asked questions while talking, he said (R. 168):

> Because of my interest in what is going on these days, because of the activities of this committee * * * because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt these rights.

On its face, this declaration shows only an intention to "protect," not the witness, but constitutional rights in the abstract against committee encroachment. The trial court was amply justified in concluding, as it apparently did, that this was not intended as a claim of privilege as to any of the questions asked. Its context (see pp. 10–18, *supra*) indicates that it was part of a speech the petitioner was determined to make, and that it was directed at the general authority of the Committee to question him, rather than at the specific incriminating propensities of any particular question. The oblique reference to the Fifth Amendment could as easily refer to the right to due process of law as to the privilege—as six of the judges below suggested in the companion *Quinn* case (203 F. 2d at 23–24, 44). The privilege against self-incrimination is neither actually nor colloquially understood as a "supplement" to the First Amendment. Petitioner's general and passing reference to the Fifth Amendment clearly did

not suffice to put the subcommittee on notice that petitioner intended to assert his claim of privilege against self-incrimination as to all the questions.[9]

Petitioner also argues (Br. 171) that he claimed the privilege, in response to questions whether he knew certain officials, in the following words (R. 171):

> Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with references to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

Apparently, even petitioner did not think that this was a claim of privilege when he argued his motions for acquittal and a new trial in the District Court (see R. 225). In any event, the statement now relied upon was almost immediately thereafter followed by the Committee's query to petitioner, "Is it your feeling that to reveal your knowledge of them would subject

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[9] Nor does it help petitioner's case (see Br. 170) to read this Fifth Amendment reference in conjunction with his earlier charge that the committee was trying to harass the union and its officers and members. Even if the charge were true, there would be no danger of incrimination to petitioner for that reason alone.

you to criminal prosecution?" to which he replied, "No. I don't think this committee has a right to pry into my associations. That is my own position" (R. 172).[10]

Petitioner argues in this connection (Br. 183–184) that, after he had made a claim of privilege, the Committee could not probe the reasons for the claim. Apparently petitioner concedes that his response to the Committee may embarrass his present argument, and thinks the case may be saved merely by disregarding a significant answer. However these arguments are resolved, it is clear that the Committee had a right to clarify for itself just what petitioner was saying when he made a statement that was at best a very equivocal claim of privilege. There is obviously a difference between trying to understand what petitioner was saying, and insisting, if he claimed the privilege, that he disclose the basis of his claim.

It is impossible to overemphasize the central fact on this phase of the case: That in a protracted colloquy between petitioner and the Committee, his major purpose was to refuse to give testimony with respect to what he called his political associations. This refusal was not based on any fear of possible criminal prosecution. It

[10] When later, petitioner kept insisting that he was making the same answer, not only as to his association with other individuals but as to his membership in the Communist Party, the only reasonable assumption is that he was not asserting a claim that his testimony would tend to incriminate him (R. 194–195).

was based solely on petitioner's view that his associations did not have to be disclosed to anyone, and certainly not to a committee which "stooped to interfere in the partisan affairs of a local union" (R. 168). This is not and should not be tortured into a claim of privilege against self-incrimination merely because of the chance use of language which, in a different context, might, at best, be consistent with a claim of privilege. In the last analysis, the question whether petitioner claimed his privilege against self-incrimination is the basis for refusing to answer the question asked him is one of fact. That question has been resolved against him both by the trial court which considered the evidence, and by the Court of Appeals which reviewed the case.

B. PETITIONER'S FAILURE TO CLAIM THE PRIVILEGE BEFORE THE COMMITTEE PRECLUDES HIS RELIANCE UPON IT NOW

It is clear that petitioner cannot rely on the privilege against self-incrimination now if he did not rely on it before the Committee. *United States* v. *Murdock,* 284 U. S. 141. There, the defendant was indicted for wilful failure to supply information at a hearing before an internal revenue agent, as the applicable statute required. At the hearing, he had specifically claimed possible incrimination under state law, but disclaimed federal incrimination. His later attempt to rely on his federal privilege was rejected by this Court, which stated (284 U. S. at 148):

> The validity of his justification depends, not upon claims that would have been warranted by the facts shown, but upon the claim that actually was made. The privilege of silence is solely for the benefit of the witness and is deemed waived unless invoked.

Essentially the same view is taken by Wigmore (8 Wigmore, *Evidence* (3d ed. 1940) § 2268):

> The privilege is merely an *option of refusal,* not a prohibition of inquiry. * * *
>
> Hence it follows that when an *ordinary witness* is on the stand, and a criminating fact, relevant to the issue, is desired to be proved through him, the question may be asked, and it is for him then to say whether he will exercise the option given him by the law. It cannot be known beforehand whether he will refuse. Besides, to prevent the question would be to convert the option into a prohibition.
>
> This principle would seem incapable of dispute.

Nor is it enough that a general objection was taken to the authority of the committee, or the materiality of a particular question asked. Cf. *United States* v. *Skinner,* 218 Fed. 870, 876 (S. D. N. Y.); *In re Knickerbocker Steamboat Co.,* 139 Fed. 716, 719 (S. D. N. Y.). See also *Vajtauer* v. *Commissioner,* 273 U. S. 103, 113.

These authorities show that the privilege must be claimed, and must be clearly enough claimed

so that there is no doubt that it was claimed. Such a rule is supported by the fundamental policy consideration that there is a primary obligation to testify which is "necessary to the effective functioning of courts and legislatures" (*United States* v. *Bryan*, 339 U. S. 323, 331; *Blair* v. *United States*, 250 U. S. 273, 281; *Blackmer* v. *United States*, 284 U. S. 421, 438). The privilege against self-incrimination, however deeply rooted, is an exception to that obligation (cf. Marshall, Ch. J., in *United States* v. *Burr* (*In re Willie*), 25 Fed. Cas. No. 14,692e, at p. 39) and must therefore be interpreted with that obligation in mind.

II

PETITIONER'S REFUSAL TO ANSWER THE QUESTIONS WAS WITH KNOWLEDGE THAT THE COMMITTEE WAS REQUIRING HIM TO ANSWER

A. PETITIONER "REFUSED" TO ANSWER

It is clear that, in the view of the majority of the court below, a witness before a Congressional committee who raises an objection to a question must in some manner be clearly apprised that his objection has been rejected and that he is being required to answer.[11] That is, it is not enough

[11] Six of the nine members of the court below specifically took this position in the companion case of *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), pending on certiorari, O. T. 1953, No. 66, which was decided simultaneously with the instant case; and in which there was a remand for retrial to determine, *inter alia*, whether the facts in that case showed

to sustain a contempt conviction that the witness, on some spurious basis, failed to answer a question. The committee may, if it chooses, accept a witness' objection, however unsound it may be, and turn to other subjects of inquiry. In such circumstances, of course, it would be unfair to contend later that the witness has been in contempt of the committee. The problem in the present case arises because petitioner disputes the Government's contention that it was made clear to him that his objections were rejected and that he was being required to answer.

It is not clear that petitioner seriously presses the contention that this must be done by the rigid formula of a specific direction to answer, followed by a rigid refusal. If he does, it is clear that the contention is not sound.

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that the witness was clearly apprised of his obligation to answer.

Three of those six judges concurred in the present case, and took the view that the "record contains sufficient evidence to support a finding that [petitioner] deliberately and intentionally refused to answer and thus to support the judgment" (R. 361). The other three of the *Quinn* majority, however, dissented here, stating that as in *Quinn*, it was not clear that the trial judge's finding of guilt was based on a finding that the witness understood that he was being required to answer (R. 361–362). The three remaining judges, Clark, Proctor, and Miller, in the majority in the present case, but dissenting in *Quinn*, apparently thought that the only issue was whether the witness failed to answer the question and whether, in fact, there was a sufficient legal basis for this refusal. See R. 355–356. Cf. *United States ex rel. Cunningham* v. *Mathues*, 50 F. 2d 411 (C. A. 3).

A Congressional investigation is an important legislative function; it is not a game of wits between committees and witnesses. The measure of witnesses' rights before committees is whether the substance of the important protections to which they are entitled has been accorded, not whether some mechanical verbal formula has been used. Certainly this is so where, as here, there is no evidence that, with respect to the particular witness, the committee attempted in any way to abuse its powers. It would seem clear that so long as the witness understands that his objections are rejected and that he is being required to answer, the particular form of words used to apprise him of this fact is unimportant.

To be sure, where Congress has itself imprisoned witnesses for contempt, it has given the witnesses an opportunity to purge themselves before imposition of imprisonment. Judge Bazelon, in concurring in the *Quinn* case below, argues that 2 U. S. C. 192 requires a similar construction because a contempt proceeding which was pending in 1857 at the time of its enactment followed this practice. Petitioner adopts this argument (Br. 188).

The practice in direct Congressional contempt proceedings, however, is not relevant. The justification for such proceedings is to remove an interference with the legislative process. Hence, Congress cannot imprison for the purpose of punishment nor can it imprison for any period

beyond its own term of life. See *Marshall* v. *Gordon,* 243 U. S. 521, 542–545; Potts, *Power of Legislative Bodies to Punish for Contempt* (Part II), 74 U. Pa. L. Rev. 780, 783. Devices to help insure that an answer from the recalcitrant witness will be forthcoming therefore are reasonable and necessary. But the offense described in 2 U. S. C. 192 is to *punish* the act of interfering with the business of Congress. The harm, obviously, is done as soon as the witness knows that his objections are rejected and that he is being required to answer, but still does not do so. The contempt statute was enacted specifically to permit punishment for this harm beyond the term of the particular Congress interfered with, to a time when it was clear that the witness' desire to comply with the demand made earlier would serve him no stead. See 34th Cong., 3d Sess., Globe, p. 406; Eberling, *Congressional Investigations* (1928), pp. 302–307. There is no evidence that the offense would be less because the offender repented, although, as with all offenses, this might be relevant in imposing the sentence.

We submit, in short, that there is no basis for insisting on the rigid formulation of a specific direction to answer followed by another refusal. Therefore, the only question on this phase of the case is whether the evidence is sufficient to justify the conclusion that petitioner's refusals to answer were in the face of his knowledge that his objections thereto had been rejected. We suggest,

however, that whether the more or the less severe test is used is really irrelevant in this case because the record amply meets either standard.

The most cursory examination of the record of petitioner's appearance before the Committee shows, beyond any doubt, that he clearly understood that the Committee regarded his so-called answers as being refusals to answer, and that he was expected to answer the questions despite his repeated objections as to the Committee's lack of authority to ask them. For example, the very first of the questions involved in the present indictment ("Are you acquainted with Joseph Persily?") was repeated six times (R. 167–170), only to be met with refusals which petitioner acknowledged were refusals. In the course of this extended colloquy, petitioner made what were apparently prepared charges against the Committee, although the chairman, Congressman Moulder, indicated as petitioner was making these charges, that he was not answering the question. Finally, when petitioner appeared to have ended his statement, Congressman Moulder, in what was unquestionably a plain rejection of the claimed basis for refusing to answer, then stated (R. 169)—

> * * * And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

Mr. TAVENNER. Are you acquainted with a Joseph Persily?

Mr. EMSPAK. For the reasons I stated before, I answered it.

Mr. MOULDER. Then you refuse to answer the question?

Mr. EMSPAK. No. I answered it.

Mr. TAVENNER. Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER. *The record will reveal that you have not answered the question.*

Mr. EMSPAK. I have answered it to the best of my ability under the circumstances. [Italics added.]

* * * * *

Nor is there any doubt that the Committee's attitude was consistent on this point. For later, the following colloquy occurred (R. 194):

Mr. TAVENNER. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York City?

Mr. EMSPAK. I answered that.

Mr. MOULDER. You mean you refuse to answer for the same reasons you gave at the beginning?

Mr. EMSPAK. That is correct. I answered the best way I know how.[12]

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[12] See also colloquy at R. 174, referred to *supra*, pp. 16–17.

These colloquies show, beyond argument, that the Committee made it clear to petitioner that the basis for his claim was rejected, and that his "answers" were understood by all concerned as being refusals to answer. They also show that, even if the Court accepts the more severe standard suggested by Judge Bazelon, namely, that there is no "refusal" until the witness is specifically advised that his answers are unsatisfactory and is specifically directed to answer the questions, petitioner's conviction here still must stand. For, over and over again, during his testimony, petitioner was apprised that the Committee thought he had not answered, both by the chairman and by the committee counsel, and that he was thereafter expected to give answers and not reasons for not answering. Even the dissenting judges below agreed that "the record reveals matters which might be said to reflect an adverse ruling by the Committee on the appellant's objections" (R. 362).

B. IT WAS PROPERLY FOUND THAT PETITIONER REFUSED TO ANSWER

Petitioner urges, however, that even if the evidence might sustain the view that he "refused" to answer the Committee's questions, still his conviction must be reversed and the case remanded, because there was no express finding on this point by the trial court (Br. 191–193).

Since this case was tried by the district court without a jury, there were, of course, no instructions to the jury. Nor was the district judge required to make special findings; a simple verdict of guilt would have sufficed. See F. R. Crim. P., Rule 23 (c). Petitioner did not request the court to make any express or specific finding as to whether petitioner's responses to the questions asked him constituted a "refusal". The issue of fact principally contested in the district court, and to which its opinion is principally devoted, was whether petitioner's refusal to answer the questions was based on a claim of privilege against self-incrimination.

In any event, we believe it clear that the district court's conclusion that petitioner was guilty of violating the statute rested upon a finding that he refused to answer the committee's questions. Thus, the trial judge pointed out that "It is reasonable to conclude that the [petitioner] fully intended his examination should proceed and terminate as it actually did" (R. 224), and that ["Petitioner] lost no time in disputing the powers, the right and authority of the committee to inquire into his beliefs, his associations, or as he stated it, anything else" (R. 225). The trial judge, further, endorsed the Committee chairman's view that petitioner's conduct "disclosed a flagrant attitude toward the Committee" (R. 226). Finally, in ruling that petitioner had

not claimed the privilege against incrimination, the trial judge stated his view that petitioner's response had been that of one "who has something to hide, or who wishes to protect others, or through pique refuses to furnish information in disregard of his duty, in defiance of a Congressional Committee, as a challenge to its powers and authority, or for distrust of its aims, its motives and its good faith" (R. 227). It is clear from the whole of his opinion that he thought that petitioner's conduct reflected all of these alternatives.

We submit that, in view of this opinion, it is plainly unsound to argue that it was not found that petitioner understood that he had a duty to answer; and that, in spite of that fact, and in spite of further opportunity to answer, he refused to do so. It would elevate form above substance to remand this case now merely because the trial judge did not state this finding in so many words, particularly when no issue had been made of the point. Cf. *Alger* v. *United States,* 171 F. 2d 667 (C. A. 7). Moreover, such a finding is implicit in the general verdict of guilty; the district court stated in its opinion that the petitioner's refusal to answer was both flagrant and premeditated. It follows, therefore, that if this finding is supported by the evidence, as it surely is, there is no basis for disturbing the conviction. *Blunden* v. *United States,* 169 F. 2d 991

(C. A. 6); *Seefeldt* v. *United States*, 183 F. 2d 713 (C. A. 10).[13]

It is clear that the substance of the colloquy between the petitioner and the committee was a direction to petitioner to answer, which he refused to obey. As we have pointed out above, it is apparent that petitioner had decided to put to the test the validity of his grounds for not answering. This meant that he had to refuse to answer on the basis which he wanted to have tested. He did this, and the district court recognized that he did so. We submit that he ought not now be permitted to avoid that test on the ground either that he did not understand that he was being required to answer and refused to do so, or that the district court did not make a proper finding as to his understanding.

III

THE COMMITTEE ON UN-AMERICAN ACTIVITIES WAS EMPOWERED TO REQUIRE PETITIONER TO ANSWER THE QUESTIONS INVOLVED HERE

Petitioner has devoted a major portion of his brief to an attack upon the Resolution authoriz-

[13] Moreover, the issue whether petitioner's refusal was wilful could only be determined from an assessment of the printed record; and, therefore, although it would have been proper, as a matter of discretion, for the court below to remand the case to the district court, there was no requirement that it do so. Cf. *Quinn* v. *United States*, 203 F. 2d 20, 24–25 (C. A. D. C.), pending on certiorari before this Court, No. 66; *Bowles* v. *Carnegie-Illinois Steel Corporation*, 149 F. 2d 545, 546 (C. A. 7); *British America Assur. Co. of Toronto, Canada* v. *Bowen*, 134 F. 2d 256, 260 (C. A. 10).

ing the Committee's investigation, and upon Committee procedures generally, without regard to the specific questions which were asked him or to the particular inquiry out of which his citation for contempt arose. Petitioner thus seeks to have this Court decide broad and basic Constitutional questions relating to the power of Congressional committees to investigate and elicit testimony in aid of their investigations, as well as to the application of the First Amendment to this Congressional power.[14]

We should first like to point out that the power of the House Committee on Un-American Activities to investigate, under the Resolution here involved, has been challenged before and the validity of that Resolution has been consistently upheld. *United States* v. *Josephson,* 165 F. 2d 82 (C. A. 2), certiorari denied, 333 U. S. 838; *Barsky* v. *United States,* 167 F. 2d 241 (C. A. D. C.), certiorari denied, 334 U. S. 843; *Eisler* v. *United States,* 170 F. 2d 273 (C. A. D. C.), certiorari granted, 335 U. S. 857, removed from

[14] Petitioner did not attack the validity of his conviction on these grounds in the Court of Appeals, although he did present in his petition for a writ of certiorari the questions, "Whether House Resolution 5, as construed and applied herein, abridged the petitioner's freedom of speech, press and assembly in violation of the First Amendment to the Constitution" and "Whether the First Amendment protects a witness before a Congressional committee against the compulsory disclosure of the identity of trade union officials with whom he is associated and of his political views and affiliations" (Pet. 10, see also Pet. 38–40).

docket, 338 U. S. 189, certiorari dismissed, 338 U. S. 983; *Marshall* v. *United States,* 176 F. 2d 473 (C. A. D. C.), certiorari denied, 339 U. S. 933; *Lawson* v. *United States,* 176 F. 2d 49 (C. A. D. C.), certiorari denied, 339 U. S. 934; *Kamp* v. *United States,* 176 F. 2d 618 (C. A. D. C.), certiorari denied, 339 U. S. 957; *Dennis* v. *United States,* 171 F. 2d 986 (C. A. D. C.), affirmed, 339 U. S. 162; *Morford* v. *United States,* 176 F. 2d 54 (C. A. D. C.), reversed on another point, 339 U. S. 258.

On this aspect of the case, the Government takes the position that only two questions are properly before this Court: (1) whether the questions which were asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and (2) if so, whether that Resolution, as so construed, is unconstitutional, in that (a) it exceeds the investigatory and legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment. In our view, petitioner's attack upon Committee activities with respect to other parties and to other questions which are not before this Court at this time raises issues which on this record are abstract and hypothetical. As we shall show, it is well settled that the validity of the Resolution only insofar as it authorized the questions asked petitioner is properly before the

Court, and that petitioner has no standing to challenge the propriety of questions asked other witnesses at other times (*infra,* pp. 66–71). We shall further show that, in any event, the Resolution, on its face, is Constitutional and does not violate the First or Fifth Amendments (*infra,* pp. 77–110).

A. THE QUESTIONS WHICH WERE ASKED PETITIONER CAME WITHIN THE SCOPE OF THE COMMITTEE'S AUTHORITY

Preliminarily, we believe it important to emphasize the nature of the particular questions which petitioner was asked and which he refused to answer. Specifically, petitioner's conviction rests on his refusal to answer 68 questions put to him by the House Committee on Un-American Activities after he had been subpoenaed by that committee and sworn as a witness. Fifty-eight of these questions asked, in substance, that he state whether or not he knew certain named individuals and could disclose whether or not those individuals presently held or had held certain positions in UE (R. 5–12), a union in which he was a national officer. Eight of the questions related to petitioner's possible membership in the Communist party, and to various evidences of that membership (R. 12–13); and the other two dealt with his "affiliation" with the National Federation for Constitutional Liberties and his "association" with the Civil Rights Congress (R. 12).

1. *The express purpose of the inquiry was to investigate into Communist infiltration into defense industries in connection with a recommendation of legislation on this subject*

The authority of the Committee to place under inquiry the particular matters here involved, and to subpoena witnesses in pursuance of the inquiry, derives from the House Resolution constituting the Committee on Un-American Activities, which provides, in relevant part, as follows:

> The Committee * * * is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The purpose of the specific hearing at which petitioner was asked the particular questions here involved was stated by Committee counsel, at the very outset of such inquiry, as follows:

> Mr. TAVENNER [Committee counsel]. Mr. Chairman, the purpose of this hearing is to inquire into the question of Communist affiliation or association of certain

members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense.

The advisability of recommending legislation providing for security standards, and the advisability of tightening present security requirements in industrial plants working on certain Government contracts, was considered by the committee in both its open and executive session on June 6, 1949, as a result of the testimony of Leona and Joseph Franey and Loren G. Haas.

It will be remembered that Mr. Wood, the chairman of this committee, offered H. R. 3903, section 2 of which would make it an offense for any individual employed in connection with the performance of any national defense contract "(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General; (2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or (3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1)

> or (2) of this section." This bill was referred to this committee.
>
> It is the further purpose of this hearing to develop facts for the committee's consideration in connection with this resolution.[15]

The question under Committee inquiry was thus, in short, the advisability of passing certain legislation to deal with the concrete danger that Communists, and those who could be used for their purposes, might be gaining a foothold in national defense plants through Communist control of unions. Such a foothold might well be used both for propaganda and direct espionage or sabotage purposes. H. R. 3903, which deals with this problem and which was expressly cited by Committee counsel, had been referred to the Committee on March 30, 1949 (95 Cong. Rec. 3546), prior to the beginning of these hearings, and prior also to the Franey testimony of June 6, referred to in the statement of Committee counsel. It thus appears clear that at least one of the purposes, if not the primary purpose, of the inquiry here was to obtain information with respect to the recommendation of specific legislation referred to the committee.

2. *This inquiry came within the language of the Resolution granting the Committee its authority*

Clause (i) of the Committee Resolution authorizes investigation into "the extent, character,

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[15] See n. 3, pp. 7–8, *supra*.

and objects of un-American propaganda activities in the United States." Clause (ii) authorizes investigation into "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *."

We shall show (*infra*, pp. 77-90) that in context the language of these clauses has a definite content, and that petitioner's attack upon the alleged ambiguity of the words "un-American" and "subversive", as a basis for defining the scope of the investigatory authority of a committee of Congress, is without foundation. However, we do not believe that it is necessary in this case to define the outermost limits of these terms. For, if anything was clear in 1949, or is clear today, it is that these words aptly describe and unquestionably include Communist activities designed to subvert our form of government. Accordingly, for the purposes of this case, inasmuch as the Committee's inquiry at issue here was into the extent of Communist infiltration into defense plants, there is no doubt that the inquiry was authorized by the Resolution.

As the Court of Appeals for the Second Circuit has said (*United States* v. *Josephson*, 165 F. 2d 82, 88, certiorari denied, 333 U. S. 838):

> At the very least the language of the authorizing statue permits investigating the advocacy of the idea that the Government

> or the Constitutional system of the United States should be overthrown by force, rather than modified by the peaceful process of amendment of the Constitution set forth in Article V.

See also *Barsky* v. *United States,* 167 F. 2d 241 (C. A. D. C.), certiorari denied, 334 U. S. 843. And this Court has itself reviewed too recently the role of the Communist Party and its advocacy of the overthrow of this Government by force and violence to require rebuttal of any contrary argument here. See *Carlson* v. *Landon,* 342 U. S. 524; *Harisiades* v. *Shaughnessy,* 342 U. S. 580; *Adler* v. *Board of Education,* 342 U. S. 485. *American Communications Association* v. *Douds,* 339 U. S. 382; *Dennis* v. *United States,* 341 U. S. 494. We cannot conceive that anyone would doubt that the advocacy of the overthrow of this Government by unconstitutional means is encompassed by the terms "un-American" and "subversive." Certainly, no one could reasonably suggest that a Resolution which authorizes a Congressional committee to investigate "un-American" and "subversive" activities does not authorize the committee to investigate into the extent of Communist infiltration in defense plants. Indeed, the Internal Security Act of 1950, 64 Stat. 987, 50 U. S. C. (Supp. V) 781, contains, in its provisions for "Subversive Activities Control", a finding by Congress that—

* * * * *

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) the Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

In sum, we think it too clear for extended discussion that, in so far as the words "un-American" and "subversive" are concerned, they clearly embrace Communist activity, the subject of the inquiry here.

In like manner, the authority of the Committee to investigate under clause (i) the "extent, character, and objects of * * * propaganda activities", or, under clause (ii), the "diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * *," covers activities such as attempts by Communists to gain a foothold in national defense plants through the device of infiltration into a labor union. The fact is that Communists operate through propaganda and advocacy. To

investigate "propaganda" and "propaganda activities" requires that an inquiry be made into the nature of the contents generally, and into the identity of those who disseminate the propaganda.[16] As is shown below (*infra,* pp. 63–65), there is considerable evidence, with which Congress is familiar, that Communists have used their positions in unions for propaganda purposes, through control of union newspapers and in handling grievance procedures and strikes. There is, also, evidence that the business of making propaganda has been combined with open and covert solicitation for Party membership and for developing possible espionage and sabotage. These activities are so closely related to propaganda that they must be regarded as clearly within the meaning of "propaganda activities." And this is, of course, the practical construction which the Committee itself has placed upon the terms of its Resolution, as petitioner's brief abundantly demonstrates.

But even if the kinds of activity being investigated in this case are not "propaganda activities" *per se,* they certainly are an aspect of the "extent, character, and objects" of such activities, which

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[16] If a distinction is to be drawn between the "propaganda", covered in clause (ii) of the Resolution, and the "propaganda activities" of clause (i), then, necessarily, propaganda activities must refer to those things which experience has shown are the devices, mechanism, and institutions used by propagandists (particularly Communist propagandists) to accomplish and make more effective the purposes of their propaganda.

under this Resolution, are a proper subject of inquiry. For it is clear that these words were intended to permit comprehensive inquiry into the success of the propaganda activities described. "Extent" calls, at least, for a measure of the volume of such activities. "Character" calls, at least, for a measure of the relative inflammatory nature of such activities, how much persuasion, how much violence, how much political strife, how much propaganda in the narrow sense. And "objects" calls for a study of the basic purposes sought to be accomplished, which very well might include the use of people recruited through dissemination of propaganda who could be induced to collect secret industrial data and make themselves available for sabotage.

In short, in order to investigate Communist propaganda, it would seem impossible not also to investigate the means by which the disseminators of the propaganda have obtained their positions of power, the extent to which these positions have been used for propaganda purposes, the relationship between propaganda and other activities, and the extent to which Communists achieve their goals by the use of propaganda. Indeed, the specific questions asked petitioner at the instant hearing demonstrate the relevance and importance of such information. *Infra*, pp. 61–66.

Moreover, this view of the authority of the Committee derives further support from clause (iii)

of the Resolution, which authorizes the investigation of "all other questions in relation" to the questions covered by the first two clauses "that would aid Congress in any necessary remedial legislation." This obviously leaves discretion to the Committee to probe aspects of propaganda problems, which, though not directly propaganda, have a great deal to do with the effectiveness of particular propaganda in accomplishing its purposes.

It is certainly clear that Congress, with knowledge that the Committee has construed the words of the Resolution in this way, has permitted the Committee to continue to exist under precisely the same charter. For example, Congress had knowledge that the Committee had, in 1947, conducted an investigation into the extent, character, objects, and methods of Communist infiltration into unions, and had obtained information about political strikes and possible espionage. (See *infra,* pp. 63–66). Congress had knowledge, also, that the Committee during the same session of Congress had conducted an intensive investigation of Communist espionage in the United States Government and into Communism in the motion picture industry, and had subpoenaed witnesses for those purposes (Hearings, Committee on Un-American Activities, 80th Congress).[17] In the

[17] For a summary review of the matters taken up by the Committee during each Congress since 1945, see Carr, *The House Committee on Un-American Activities*, 1945–1950.

face of this knowledge, the charter of the Committee was nonetheless renewed in 1949 at the opening of the 81st Congress (during which petitioner was called).

The question here is basically one of determining whether this inquiry represented a valid exercise by the Committee of the authority given it by Congress. Consistent Congressional reenactment of a charter to what is certainly a well-known—to Congress as well as to the general public—committee forecloses any argument, as applied to this case, that the Committee erroneously interpreted the will of Congress in construing the Resolution to mean that it could investigate the possibility and techniques of Communist domination of a union important in national defense plants. Compare *United States* v. *Rumely,* 345 U. S. 41, 47–48. To accept such an argument would, we submit, clearly disregard every indication that Congress has given that the House Committee on Un-American Activities has been authorized by it to investigate the nature and scope of Communist propaganda activities, in the broad sense, designed to subvert the present form of government of the United States.

3. *The questions which petitioner refused to answer were within the scope of the inquiry*

Since at least one of the subjects of the inquiry was the advisability of certain legislation,

and since the Committee was authorized to submit that subject matter to inquiry, there can be no serious argument that the questions which petitioner refused to answer were not "pertinent to the question under inquiry."

The proposed legislation (H. R. 3903) related to work in defense plants by members of the Communist Party and of its organized supporters, and attempts by others, presumably including union officials, to encourage defense plant workers to support the Party or its "fronts". The further legislation, which the Committee's own experience had suggested, related to tightening security requirements in defense plants, with special reference to access to such plants by union officials who had not been subjected to the safeguards imposed on regular employees. It is plain that these two suggestions were related, and that any thorough investigation of the legislation introduced in the House would canvass the need for the latter provisions. Both, in fact, were recommended by the Committee in its annual report (*Annual Report of the Committee on Un-American Activities for the year 1949,* pp. 23–24), and, with modifications, H. R. 3903 found a place in the Internal Security Act of 1950, 64 Stat. 987, 992, Sec. 5, 50 U. S. C. (Supp. V) 784.

With this as the matter under inquiry, it appears that petitioner was asked a series of questions related to the organization and structure of

UE, all of which he answered. Following this, he was asked the questions now at issue. As we have indicated (*supra,* p. 51) most of these were whether he knew certain named individuals who were thought to be district organizers or international representatives of UE. The remaining questions dealt with petitioner's possible membership in the Communist Party and his possible association with two groups alleged to be Communist front groups.[18]

If the Committee were to determine the need for the proposed legislation, it was obviously pertinent to know if a union like UE, which had a sizeable membership in defense plants, was Communist dominated. It was pertinent to know also how the Communist domination made itself effective: whether only through the propaganda line in the UE News or by oral advocacy, or whether this was in conjunction with the selection of district organizers and international representatives, who served as liaison between the national headquarters and locals, and who were in a position thereby (a) to help formulate the thought of union members on issues as to which the union took a position, and (b) to adjust labor disputes and grievance policy to the sometimes delicate de-

[18] After the colloquy on these questions, the Committee went on to ask petitioner about his work as editor of the UE News, and the circumstances accounting for its consistent adherence to the Communist Party line. These questions petitioner answered.

mands of the Party line and the possible demands by the Soviet Union for information about American industry.

Indeed, the Committee's own earlier investigations indicated the need for careful inquiry into this area before reaching conclusions on the suggested legislation. In 1947 hearings conducted by the Committee, several witnesses had given testimony about UE. Among other things, it was testified that the national board of UE had unsuccessfully attempted to revoke the charter of one of its locals immediately after the local board had waged a successful fight against a Communist faction among its own membership. *Hearings Regarding Communism in Labor Unions,* I House Committee on Un-American Activities, 80th Cong., p. 149. There was testimony that there had been open solicitation of Communist Party memberships by UE officials (*id.,* p. 161); that certain of the international organizers of the union were Communists (*id.,* p. 171); that there had been contributions made in the name of the union to Communist "front" organizations and simultaneous refusal to support non-"front" groups (*id.,* pp. 159, 180, 181); and that resolutions following the Communist Party line had been adopted in the name of the union as a result of the efforts of Communists in the union (*id.,* pp. 159–160, 180, 185). It was pointed out that Communist effectiveness even in the local had been quite out of

proportion to the number of Communists in the union (*id.*, pp. 164, 165, 167). It was pointed out also that the local union newspaper followed the Party line (*id.*, p. 174), and that there was a remarkable similarity of approach as between several of the papers put out by unions reputed to be Communist-dominated (*id.*, p. 168). It was stated that the ultimate Party interest was in swaying political thought (*id.*, p. 184), which often increased the difficulties of orderly settlement of grievances (*id.*, pp. 162–163). And there were predictions by two witnesses, with long experience in the union, that there would be dangers of sabotage and political strikes in the event of armed conflict between the United States and the Soviet Union (*id.*, p. 17, 185–186).[19]

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[19] Similar testimony was developed before the Committee with respect to Local 248 of the United Automobile Workers in connection with inquiries into the 1946 strike at the plant of the Allis-Chalmers Company, at Milwaukee. See Hearings Regarding Communism in Labor Unions, *supra*, pp. 1–60. At pages 6–7 of those Hearings, an unfavorable complaint of one of Allis-Chalmers' employees is reported, and gives some idea of Party technique:

"What is the idea, I call Owen Lambert in on a grievance, expecting to get a raise, or the right price on this job I am working on, and he talks to me hour on hour about joining the American Youth for Democracy, or he wants to sell me a subscription to the New Masses or to In Fact, or the Daily Worker, and he gives me booklets to read, and we never get around to the handling of my grievance." In Carr, *The House Committee on Un-American Activities, 1945–1950* (1952), pp. 47–49, a summary analysis is made of these hearings on Communism in labor unions.

It would seem impossible even to argue about the pertinence of fuller and additional data of this nature, particularly when it was sought from a witness, like petitioner, who concededly occupied an important position in the Union.[20]

To summarize, it is clear that the questions which were asked petitioner came within the scope of the Committee's authority because it is clear that an investigation into Communist infiltration into defense plants is within the scope of the Resolution, and that the particular questions asked were pertinent to this limited investigation.

B. THE RESOLUTION, AS APPLIED HERE, IS CONSTITUTIONAL

1. *The only constitutional questions properly before the Court are those arising out of the particular questions which petitioner refused to answer*

We emphasize that the only constitutional questions which are properly before this Court are those which relate to the particular questions which petitioner was asked, *i. e.,* whether the grant of authority to the Committee to ask those questions violates the Constitution. Petitioner's attempt to have this Court decide questions, not presented by this record, relating to other aspects of the Resolution, other witnesses, other questions,

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[20] Moreover, the testimony at the trial showed this pertinence (R. 157–158). Cf. *Bowers* v. *United States*, 202 F. 2d 447 (C. A. D. C.)

and other proceedings is misconceived. This is not an appropriate case for deciding generally the validity of all aspects of the resolution authorizing investigation by the House Committee on Un-American Activities or for passing upon everything the Committee may have done in the past. See *United States* v. *Rumely*, 345 U. S. 41; *Barsky* v. *United States*, 167 F. 2d 241, 248, certiorari denied, 334 U. S. 843.

This Court has repeatedly said that it will not pass on issues of legislative validity until they come before it inescapably, in concrete form, with the factual background and record appropriate for decision of the concrete question; this Court neither renders advisory opinions on hypothetical cases nor declares general constitutional doctrines unrelated to the particular case.[21] Thus, in *United Public Workers* v. *Mitchell*, 330 U. S. 75, where the Court refused to entertain a complaint, at the instance of persons who had not violated the Act, that the Hatch Act violated rights under the First Amendment and was un-

[21] See *Federation of Labor* v. *McAdory*, 325 U. S. 450, 461–2; *United Public Workers of America* v. *Mitchell*, 330 U. S. 75; *Rescue Army* v. *Municipal Court*, 331 U. S. 549, 568 ff, and earlier cases there collected; *United States* v. *Petrillo*, 332 U. S. 1, 5; *Toomer* v. *Witsell*, 334 U. S. 385, 394; *Parker* v. *Los Angeles County*, 338 U. S. 327, 333; *District of Columbia* v. *Little*, 339 U. S. 1, 3–4; *Sweatt* v. *Painter*, 339 U. S. 629, 631; *Touhy* v. *Ragen*, 340 U. S. 462, 469; *United States* v. *Hayman*, 342 U. S. 205, 223; *United States* v. *Rumely*, 345 U. S. 41, 48.

constitutionally vague under the Fifth Amendment, the Court stated (330 U. S. 89–90):

> The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interference upon the other.

By this standard, it is plain that the broad issues tendered by petitioner here should not be decided in this case. The challenged Resolution was quite clear enough for petitioner to understand that he was under a duty to testify as to the questions put to him. For this Court, in these circumstances, to undertake to decide whether, without respect to its clearly operable area, the Resolution is too vague in other situations would be to decide a hypothetical case not now before the Court.

Moreover, in applying essentially the same principle but with somewhat different emphasis, the Court has insisted that a complainant has standing to challenge the validity of legislative acts only as those acts affect him directly. He cannot insist on the rights of others, whether their cases be actual or hypothetical. *United States* v. *Wurzbach*, 280 U. S. 396, 399; *Robinson* v. *United States*, 324 U. S. 282, 286; *Kuehner* v. *Irving Trust Co.*, 299 U. S. 445, 455. For instance, in Chief Justice Vinson's opinion in *Dennis* v. *United States*, 341 U. S. 494, 515–516, it was pointed out that the defendants, convicted for conspiracy to teach and advocate the violent overthrow of the Government, could not complain of possible difficulties in the application of the statute to other persons and in other circumstances. So here, we do not believe that petitioner, to whom the Committee Resolution is clearly applicable, should be permitted to attack all possible applications of the Resolution. The fact that there may have been broader applications of this Committee's investigatory power in the past, or that there may be in the future, does not change the principle, and allow petitioner to raise objections which might have arisen had he been asked different questions.

That these standards of judicial restraint are applicable to Congressional resolutions of the kind here involved was clearly settled by this

Court's opinion in *United States* v. *Rumely*, 345 U. S. 41, where this Court said (345 U. S. at 456):

> Patently, the Court's duty to avoid a constitutional issue, if possible, applies not merely to legislation technically speaking but also to congressional action by way of resolution. See *Federal Trade Comm'n* v. *American Tobacco Co.*, 264 U. S. 298. Indeed, this duty of not needlessly projecting delicate issues for judicial pronouncement is even more applicable to resolutions than to formal legislation. It can hardly be gainsaid that resolutions secure passage more casually and less responsibly, in the main, than do enactments requiring presidential approval.

To go beyond the boundaries of this case to consider, unnecessarily, possibly difficult constitutional questions of the validity of an authorization of the Congress, on behalf of a witness not really hurt by alleged improprieties in the resolution or of the committee, would itself, we respectfully submit, be in direct conflict with the governing principles of constitutional adjudication established and consistently adhered to by this Court. The only constitutional question here presented is whether the Resolution, interpreted so as to authorize the inquiry and questions, violates the Constitution.

Another way of reaching this result is via the doctrine of separability. For any possibly invalid application of the Resolution can be sepa-

rated from those which are valid, without invalidating the Constitutional scope of inquiry. A statute may, of course, be invalid as applied to one set of facts and valid as applied to another. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne,* 224 U. S. 354; *Kansas City Southern Ry. Co.* v. *Anderson,* 233 U. S. 325; *Poindexter* v. *Greenhow,* 114 U. S. 270, 295; *Federation of Labor* v. *McAdory,* 325 U. S. 450, 462. There would seem to be no reason why the same is not true with respect to a resolution. For the principle of separability, which permits the valid part of a legislative act to be saved where it appears that the enacting body would have authorized the valid matter even if the invalid were eliminated, is not dependent on any difference between a statute and a resolution.

2. *The Committee had the power, under the Constitution, to ask the questions here involved, and, in so doing, did not violate either the First or Fifth Amendment*

(a) We submit that under our view of the Resolution no serious constitutional question as to its validity is presented. The power of the Committee to inform itself, in order the more intelligently to recommend legislation or to approve legislation which has been referred to it, appears to us to be beyond constitutional attack. It is an essential function of Congress to inform itself upon all matters of national concern.

McGrain v. *Daugherty,* 273 U. S. 135, 171–175; *United States* v. *Norris,* 300 U. S. 564, 573. The cases establish, and it cannot be denied, that a Congressional committee may seek facts by compulsion, when necessary, in aid of the power of Congress to legislate. This means that Congress may seek to elicit all the facts bearing on a subject within its constitutional authority. It is not limited to inquiring into those facts which show the need for legislation or into those matters which it has power to prohibit. The power to investigate is necessarily broader than the substantive power which may be exerted by the investigator. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U. S. 186; *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501. It is equally important for Congress to be informed as to facts which would show legislation to be undesirable and unnecessary. Congress obviously cannot tell whether there is need or Constitutional basis for regulating the statements of which, for example, "propaganda" may consist until it learns what those statements are, and what the object and effects of such "propaganda" may be.

Here, where the Committee was seeking information in relation to propaganda and propaganda activities, which at the least encompassed the advocacy of the overthrow of the Government by force and violence, we submit that there can be no dispute as to the authority of Congress or

the Committee to elicit testimony in connection with that inquiry, both voluntarily and compulsorily.

(b) In this view, there can be no contention that this power of Congress and the Committee encroaches upon First or Fifth Amendment rights.

(i) As we have shown (*supra,* pp. 54–61), the Resolution must be interpreted so as, at the very least, to embrace the Communist activity which was the subject of the inquiry. Indeed, petitioner's contention is not that the resolution cannot be construed to cover what was undertaken by the Committee. It is, rather, that the ultimate extent of the Resolution is so undefinable that no one ought to be obliged to respond to an investigation conducted pursuant to its terms, however obvious it may be that the Resolution covers the inquiry to which the complaining individual has been called.

Although we disagree with this view (see *infra,* pp. 77–95), we think it well to repeat here that petitioner has no standing to challenge the definiteness of the Resolution as to other persons differently situated, so long as it clearly applies to him. See *supra,* pp. 66–71; and see *Williams* v. *United States,* 341 U. S. 97, 101–102; *Jordan* v. *DeGeorge,* 341 U. S. 223, 231–2; *United States* v. *Petrillo,* 332 U. S. 1, 7. As to him, we think it clear that there is no Constitutional infirmity of vagueness.

To put it another way: In our view, the natural and spontaneous meaning of the Resolution is that it authorizes the Committee to investigate at least into "Communist propaganda" and "Communist propaganda activities." So read, as we have shown (*supra,* pp. 51–61), it clearly authorized the inquiry under consideration. So read, the questions petitioner refused to answer clearly were pertinent to the inquiry. So read, there can be no questions of vagueness.

(ii) Nor, in this view, can there arise any question of deprivation of the rights guaranteed by the First Amendment, although petitioner urges that he could not be compelled to answer the questions put to him in this case because they call for the disclosure of political affiliations and associations which, he says, is barred by the First Amendment.

Petitioner is a national officer in a union which has voluntarily assumed certain quasi-public responsibilities in connection with labor-management relations. See *American Communications Association* v. *Douds,* 339 U. S. 382, 401–402. Information relative to the organization, structure, activities and membership of such a union does not pertain merely to private "political associations." Whether there may be private aspects to petitioner's relationships with the persons named, and whether there may be some political associations as to which there can be silence, the fact remains that petitioner here

has voluntarily assumed a public responsibility in connection with other UE officials the details of which he cannot refuse to disclose. Whatever is meant by "political associations and affiliations," it cannot reasonably include associations directly related to the union relationships involved in this case.[22] Congress may inquire into possible membership in the Communist Party of leaders of a union who are thought to have access to significant defense information. Even more clearly, Congress may inquire to discover the techniques which may be used to make the whole membership of a union subservient to the aims and policies of the Communist Party.

But, even if this view is not accepted, petitioner's argument is still without merit. This Court has held that, consistently with the First Amendment, Congress may constitutionally require leaders of labor unions, which invoke the benefits of the Labor Management Relations Act, to disclaim under oath their membership in the Communist Party. *American Communications Association* v. *Douds,* 339 U. S. 382; *Osman* v.

[22] Because 58 of the 68 counts against petitioner depend on his refusal to answer questions related to his knowledge of certain persons who were apparently UE officials, and to his knowledge whether those persons were in fact UE officials, and because petitioner's conviction can stand if only one of the 68 counts in indictment is sufficient, the answer to this argument will be confined principally to those questions.

Douds, 339 U. S. 846. This is clearly recognition that the Communist Party cannot fairly be treated as an ordinary political party, nor associations in it as ordinary associations. The evidence that it is used for purposes, and with techniques, creating dangers to the national security is too impressive to ignore. Cf. *Dennis* v. *United States,* 341 U. S. 494. See also, *e. g., Adler* v. *Board of Education of the City of New York,* 342 U. S. 485; *Harisiades* v. *Shaughnessy,* 342 U. S. 580. These nonpolitical attributes of the Party are what justify not treating it as a mere political association. It follows, again, that whatever the propriety of inquiry into political associations, that is not a relevant issue here.

The fact is that Congress has legislated with regard to Communists and Communist propaganda with frequency in recent years. In petitioner's view, that legislation would have had to be enacted without the aid of a preliminary investigation or inquiry into the nature, techniques, and aims of Communist propaganda. Since such legislation has been upheld as not in violation of the First Amendment, *a fortiori,* a Resolution authorizing a committee of Congress to investigate into the desirability of further legislation is valid.

For the power to investigate must necessarily include power to inquire into what can and cannot be regulated, so as to draw a line in legis-

lating, and must therefore be broader in scope than the legislative power itself.[23]

C. THE RESOLUTION, ON ITS FACE, IS CONSTITUTIONAL

We have shown, that whatever else the Resolution might encompass, it clearly covered the inquiry with which this case is concerned and that the questions which petitioner refused to answer are plainly within the scope of that inquiry. Petitioner, however, contends that the Resolution is so vague on its face as to be unconstitutional, and that the Resolution, broadly read, violates the First Amendment. Although for the reasons we have discussed (pp. 66–71), we do not believe that these contentions need be faced on this record, we shall present the reasons for our view that these contentions are without merit.

[23] *United States* v. *Rumely*, 345 U. S. 41, is not inconsistent with this view. In the first place, this Court expressly abstained from deciding to what extent the First Amendment prohibited Congressional investigation into lobbying activity. In the second place, as the Court pointed out (345 U. S. at 45): It was "* * * giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process," which raised doubts of constitutionality in view of the prohibition of the First Amendment. Here, however, the scope of the Resolution with which we are here concerned at this point is limited to Communist propaganda and Communist activity, clearly legitimate objects of legislative concern.

1. *The Resolution, on its face, satisfies whatever standards of definiteness may be applicable to Resolutions establishing congressional committees*

(a) *Standards of definiteness are inapplicable to Resolutions establishing congressional committees.*—In order to determine whether the committee resolution is unconstitutionally vague, it is necessary, first, to consider the criteria which govern Congress in establishing committees with investigatory powers.

We start with the proposition that no provision of the Constitution—and nothing in its basic structure—limits the powers of inquiry which Congress may bestow on any committee, so long as it does not go beyond the sphere over which Congress itself has authority. There is no doctrine of separation of powers as between Congress and its committees. In the beginning, the Senate had only 26 members, less than some present committees,[24] and only slightly more than the 21 members on the present Senate Committee on Appropriations. 60 Stat. 815. Indeed, R. S. 102 still refers to matters "under inquiry before either House * * * or any committee of either House."

An inquiry by a House of Congress could be conducted without any underlying statute or res-

[24] Most House committees have 25 or 27 members. The Committee on Appropriations consists of 43 members. 60 Stat. 822.

olution defining its scope. The inquiry would necessarily be limited to subjects which Congress had constitutional authority to investigate. It would be necessary to show that a particular question pertained to such a subject, but the absence of a resolution describing the subject to be investigated would not render the whole proceeding void.

The committees sit as arms of Congress, not as subordinate agencies. And the necessities of their relationships to Congress require that the subjects over which they have jurisdiction be broadly defined, for it is not the purpose or function of the resolutions defining their jurisdiction to set standards of conduct. It is the purpose and function of such resolutions to permit recommendations with respect to what standards of conduct should be enacted. It is the purpose of such resolutions, particularly when they run to standing committees, to create a ready intelligence to evaluate and recommend in a general area of legislative activity. The precise nature of all the questions that will fall into this area obviously cannot be known in advance of drafting the resolution (as may perhaps be the case with limited special inquiries, cf. *United States* v. *Rumely*, 345 U. S. 41).

The history of the Legislative Reorganization Act emphasizes this. It shows that a major purpose of the Act was to put an end to over-

lapping committees, so that it could be told, without conflict, to precisely what committees particular legislative matters should be assigned, and so that individual congressmen could concentrate their attention on a smaller number of committees.

This suggests that the framing of committee resolutions was regarded as a largely administrative matter, having no regard to problems of specificity; and, indeed, suggests that the problem, as Congress saw it, was not that earlier committee assignments were too general, but, rather that they were too specific to permit flexible administration.

Each regular standing committee—at least in the Senate (Legislative Reorganization Act, 1946, Sec. 134, 60 Stat. 831–832)—may make "investigations into any matter within its jurisdiction."[25] The Committees on Interstate and Foreign Commerce, for example, have jurisdiction over "interstate and foreign commerce generally," *inter alia* (*id.*, at 817, 826); the Committees on the Armed Services over "common defense generally," *inter*

[25] Investigations are authorized in the House by special resolution. But these resolutions frequently authorize the standing committees merely "to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such committee." See, for example, House Resolution 141, 80th Cong., 1st Sess., printed at 93 Cong. Rec. 5057, which uses the above language in authorizing the Committee on Armed Services to conduct an investigation; House Resolution 93, printed in 93 Cong. Rec. 5058.

alia (*id.*, at 815, 824); and the Committees on Appropriations simply over "appropriation of the revenue for the support of the Government" (*ibid.*)—which might permit inquiry into every subject for which Congress does or could be asked to appropriate money. These definitions of the powers of Congressional committees are far broader than the standards of definiteness required in criminal statutes. They are far broader than the standards applicable when the Congress is delegating authority to the Executive Departments or agencies. No administrative body could be empowered merely to regulate "interstate or foreign commerce generally." Cf. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495. And yet no one has ever suggested that these committees are unconstitutional, or that they lack power to investigate, because of the sweep of their authority. It is, indeed, clear why there has never been any such suggestion. To judge committee resolutions by normal standards of definiteness would invalidate every general assignment of committee jurisdiction and hobble almost beyond repair the administration of Congress. In short, criteria of definiteness do not apply to Congressional Resolutions of the kind here involved.

(b) *No problem of definiteness is presented so long as the subject of the actual inquiry has been disclosed.*—The only basis for suggesting, in the face of all these considerations, that the rule as to

definiteness of criminal statutes becomes applicable in a prosecution for refusing to testify before a committee, is the assumption that R. S. 102 and the statute or resolution embodying the Committee's authority must be read together as an integrated criminal law, and that if the authorizing resolution so read does not satisfy criminal law standards of definiteness it must be deemed unconstitutional insofar as compelling testimony from witnesses is concerned. But acceptance of this argument would impose upon the power of Congress to create committees requirements as to specificity entirely inconsistent with practice and history, and without any constitutional basis. For the long-exercised power to establish committees with general investigating authority would be futile if such committees could not prosecute witnesses who refuse to testify.

Nor is any such limitation essential to protect witnesses against essential unfairness or infringement of their right not to be questioned about matters outside the constitutional authority of Congress. We turn to the criminal statute, 2 U. S. C. 192, to see whether it gives a witness or prospective witness an "ascertainable standard of guilt" (*Winters* v. *New York*, 333 U. S. 507, 515), without regard for the generality of the statute or resolution by which a committee is created.

There is no problem with respect to the first portion of 2 U. S. C. 192, which provides that "Every person who, having been summoned as a witness

by the authority of either House of Congress to give testimony or to produce papers upon any matters under inquiry before either House * * * or any committee of either House of Congress, willfully makes default" shall be guilty of a misdemeanor. The ingredients of the crime are that the witnesses must be summoned to give testimony, that it be on a matter under inquiry, and that he "willfully makes default." There is nothing indefinite about any of these factors insofar as the witness is concerned. The statute does not leave it to the witness to determine the nature of the matter under inquiry; he need only know that the summons is to testify on a matter which is under inquiry. And this is a reasonable means of exercising the power of Congress to investigate. The defaulting witness is not thereby deprived of his right to defend against prosecution on the ground that the whole proceeding is unconstitutional, but that does not go to the definiteness of the statutory obligation.

Nor is the second clause of 2 U. S. C. 192—which is involved in the present case—which punishes refusal "to answer any question pertinent to the question under inquiry," made unconstitutionally indefinite by the generality of the statute or resolution creating the investigating committee. If we assume that the witness must have a basis for judging the pertinence of the "question under inquiry" in order to determine whether he must answer, it does not follow that such information

is obtainable only from the resolution creating the committee. A witness might not be aided by reference to "the common defense generally" or to "interstate and foreign commerce generally." The precise question under inquiry in an investigation or in a portion of it would normally be obvious at the time of the question. A witness who honestly had doubts could ask the committee before deciding whether to answer a particular question.

The inquiry here was in fact pin-pointed to the consideration of the advisability of two legislative proposals, one in the form of a bill referred to the Committee by the House, and the other developed by virtue of the Committee's own earlier investigations. See pp. 51–54, *supra*. Although it is not clear that the witness was specifically informed on this point, it was a matter of public record, and he seems to have raised no question at the time as to the purpose of the hearing.[26] In any event, it would seem that the test of what was under inquiry was what was in fact under inquiry, not what petitioner might have thought was under inquiry.

So far as we have been able to discover, there is no case authority which would require that the

[26] The fact that the Chairman stated that the "purpose of this Committee is to expose communism * * *" does not establish that the petitioner was misled as to the purpose of the hearing. Cf. *infra*, pp. 103–111.

resolution be read as an integral part of 2 U. S. C. 192 as definitive of the offense. However, there is one group of cases which would seem to be analogous. Convictions have been sustained for violations of administrative regulations, where the regulations have been promulgated under some very general standard. See, *e. g., Boyce Motor Lines* v. *United States,* 342 U. S. 337. In such cases, obviously, the general standard is not required to meet criminal statute standards of specificity. The test is whether the regulation, in a general way, embodies the principle authorized by the basic statute, and whether the regulation is itself definite enough.

The policy embodied in these holdings is basically the same policy embodied in dealing with Congressional regulations. An area of conduct, for purely practical reasons, cannot be defined precisely in advance. *Ad hoc* administration by Congress, on the other hand, would create chaos. Congress cannot pass a law for every industry subject to a general kind of regulation, if it is to have time to do anything else. Equally, Congress cannot pass a resolution for the investigation of every problem that comes before it. If the specificity of the particular regulation having impact on the complainant suffices in the administrative regulation field, it ought also to suffice, *a fortiori,* in the area of investigative resolutions.

In this view there is, of course, no problem of vagueness of the Resolution, for the subject matter of this particular inquiry was quite clear and specific, and the particular questions asked were obviously pertinent to that inquiry.

(c) *In any event, the Resolution here is sufficiently definite.*—Petitioner's principal contention as to the alleged ambiguity of the Resolution relates to the words, "un-American," "subversive," and "propaganda" and "propaganda activities." Assuming, *arguendo* (but cf. *supra,* pp. 66–71), that petitioner can challenge the Resolution in this manner, we think it clear that each of these terms may fairly be given an operable definition, and that the Resolution, as a whole, is sufficiently definite.

(i) *"Un-American"*: Clause (i) of the Resolution gives the Committee the authority to investigate "the extent, character, and objects of un-American propaganda activities in the United States," and clause (ii) of the Resolution gives the Committee authority to investigate "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *." This language of the second clause at least makes clear one meaning of "un-American." For it shows, on the very face of the Resolution, that "un-American," as used in the first clause, includes "subversive" as that term is, in turn, limited in the second clause.

Although it can be urged that the use of "subversive and un-American" conjunctively in the second clause means that they are mutually exclusive, the more correct inference is that the words were conjoined for emphasis. A definition of "un-American" which did not include "subversive * * *" would, to say the least, be completely unrealistic (see pp. 87–91, *infra*, dealing with the definition of "subversive"). But even more convincing than this is the failure of the Resolution to include "subversive * * *" in the first clause, although it was spelled out in the second. It is unthinkable that Congress would have intended to investigate un-American propaganda activities, and *exclude* those activities carried on by subversives "instigated from foreign countries" and attacking "the principle of the form of government as guaranteed by our Constitution." The only conclusion that can be reached is that no such exclusion was intended, but that "un-American" was intended to be comprehensive of "subversive", as thus defined.[27]

(ii) "*Subversive propaganda*": Although the important word in the Resolution, from the point of view of clarity, is "subversive", it modifies

[27] Petitioner himself agrees with this view. At page 34 of his brief, he states that "The second clause of the resolution in no way expands its basic subject matter. It merely particularizes the generality of the first clause both with respect to the kinds of propaganda to be investigated * * * and the sources of such propaganda * * *."

"propaganda", which is therefore discussed first. This is, in an era of extensive propaganda warfare, surely a term of knowable content. It is not an indefinite concept incapable of practical application.[28]

But it is not all propaganda that is subject to investigation. It must be "subversive" propaganda. In the context of this Resolution, it is submitted that the word "subversive" plainly connotes propaganda that encourages illegal methods of undermining the principle of the republican form of government: espionage, sabotage, and the attempt to cause change in the form of our government without following normal constitutional processes.

In short, subversion refers, as simply and directly as any word could, to complete overthrow.[29]

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[28] Webster's *New International Dictionary* (Merriam-Webster 2d ed. 1950, p. 1983) defines it as follows:

> 2a. * * * Any organized or concerted group, effort, or movement to spread a particular doctrine or system of doctrines or principles; as, the need of a more active social *propaganda*. b. Now, often, dissemination of ideas, information, gossip, or the like, for the purpose of helping or injuring a person, an institution, a cause, etc.; as, the victim of the opposing party's *propaganda;* belligerent *propaganda* among neutrals.
>
> * * * * *
>
> 3 * * * (b) A scheme or plan for the propagation of a doctrine or system of principles; as, the cleverly worked-out *propaganda* of the enemy.

[29] The dictionary leaves no doubt of the narrow scope of the word. It refers to "subvert" which, in turn is defined

It refers, as we have said, to a change of government without benefit of orderly process.

Congress itself, less than a year after petitioner's testimony, labelled a subchapter of the Internal Security Act of 1950 as "Subversive Activities Control"; and included in that subchapter activities (1) which related, directly or indirectly, to advocacy of the use of force to challenge the Government, or (2) which involved espionage and related activities. 18 U. S. C. (Supp. V), Ch. 115, Subchapter I, 2385–2390. There was nothing new in this classification. The codifiers of the United States Code have consistently used "subversive" as a compendious description of those laws similar to those dealt with under the "Control of Subversive Activities", or those which dealt with certain inter-

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as follows (Webster's New International Dictionary (Merriam-Webster 2d ed., 1950)):

> [* * * fr. *sub.* under + *vertere* to turn * * *] *Transitive:*
>
> 1. To overturn from the foundation; to overthrow; to ruin utterly; to destroy; also, to upset, uproot, or the like.
>
> * * * * *
>
> 2. To pervert, or corrupt (one) by undermining his morals, allegiance, or faith; to alienate; as, propaganda that *subverts* foreign-born citizens.
>
> 3. To destroy completely the existence, potency, soundness, etc., of: to render futile, void, inoperative, or the like; as, to *subvert* another's arguments, the principles of religion, the constitution, or the government.
>
> —*Intransitive:* To overthrow anything completely; to destroy. Syn.—See overturn.

ferences with the military establishment (*e. g.*, encouragement of insubordination or mutiny by military personnel). See 18 U. S. C. (1946 ed.) 9, 10, 11, 13, 14; 50 U. S. C. (Supp. V), Ch. 23, Subchapter I, 781–798; 8 U. S. C. (Supp. V), 137; 50 U. S. C. App. (Supp. V), 2263. While it is explicitly provided that inferences of legislative construction are not to be drawn from the placement of laws in the Code nor by reason of catchlines (Sec. 19 of the Act of June 25, 1948, 62 Stat. 683, 862), it is nonetheless true, and significant, that the codifier's use of "subversive" is consistent with the reasonable understanding which Congress' 1950 Act indicates; and that both are indicative that "subversive" is a concept of definite meaning. Cf. *Dennis* v. *United States,* 341 U. S. 494, 505; *Adler* v. *Board of Education,* 342 U. S. 485.

This meaning of "subversive", moreover, is emphasized by the Resolution itself which attaches the further condition that the subversive propaganda, to be subject to investigation, must also attack "the principle of the form of government as guaranteed by our Constitution." It is difficult to believe that anyone would read this as meaning anything other than the republican form of government which, too, has specific content.[30]

[30] The phrase is narrower than "the principles of the Constitution" discussed in *Schneiderman* v. *United States,* 320

"[T]he distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *In re Duncan,* 139 U. S. 449, 461. Thus, there must be, at least, an attempt, or a scheme or plan, to spread a system of ideas that rejects representative government; and even such a plan is not covered unless the propaganda is "subversive".

(iii) *"Propaganda activities":* As we have indicated above (pp. 57–61), "propaganda activities" as used in Clause (i) of the Resolution must refer to the mechanisms and devices of subversive propagandists which are integrally related to their propaganda. Clause (ii), however, refers,

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U. S. 118. The majority in the *Schneiderman* case did not find it necessary to define these principles, but accepted the Government's definition for purposes of the decision (320 U. S. at 140). The dissent of Chief Justice Stone defined the principles as follows: "* * * among them are at least the principle of constitutional protection of civil rights and of life, liberty and property, the principle of representative government, and the principle that constitutional laws are not to be broken down by planned disobedience. I assume also that all the principles of the Constitution are hostile to dictatorship and minority rule; and that it is a principle of our Constitution that change in the organization of our government is to be effected by the orderly procedures ordained by the Constitution and not by force or fraud." (320 U. S. at 181.)

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not to "propaganda activities," but merely to "propaganda". It seems clear, however, in spite of that fact, that this investigation would be comprehended by clause (ii) alone. For authorization to investigate the "diffusion" of subversive propaganda is, on its face, an authorization to determine how much the propaganda is spread, the channels through which it is spread, the techniques for making its spread effective, and the purposes for which it is spread.[31]

The remaining portions of the Resolution, moreover, emphasize that this is the purport of the word "diffusion." The first clause of the Resolution authorizes investigation into the "extent, character, and objects" of un-American propaganda activities, which shows, as we have already urged, that the investigation of those activities was to be complete. The third clause charges the committee to investigate all other questions, in relation to the investigations authorized in the first two, "that would aid Congress in any necessary remedial legislation." Again, this is a charge to make the investigation

[31] This is made clear, again, simply by turning to the definition of "diffusion", which refers to "spreading", "extension", "dispersion" and as synonym, to "propagation." Webster's *New International Dictionary* (Merriam-Webster 2d ed., 1950, p. 728). The substance of these explanations of the word shows precisely what Congress wanted to investigate: the extent, processes, and purposes by which described propaganda becomes a force in American public life and which must be reckoned with by legislation.

complete. The word "diffusion" is broad enough to authorize, similarly, an investigation of all relevant aspects of the described propaganda, and in this context, the inference is that it should have that meaning.

The difference between referring, on the one hand, to the "extent, character, and objects" in relation to propaganda activities, in clause (i) of the resolution, and referring, on the other hand, to "diffusion" in relation to "propaganda," in clause (ii), is obviously a reflection of the grammatical fact that "activities" do not "diffuse", whereas ideas and "propaganda" do. The difference certainly does not permit an inference that the investigation with respect to "subversive propaganda" was to be narrow.

Nor does the fact that the "diffusion" of "propaganda" is subject to investigation only when it is "subversive and un-American" whereas "propaganda activities" may be investigated if they are merely "un-American", have any tendency to show that the effects of propaganda cannot be fully studied. The difference in standard shows only that Congress was being very careful to avoid calling before it groups whose activities were merely propagandist, unless the propaganda was of a seriously disruptive nature. This has nothing to do with what sort of investigation is permissible once the group falls within the described class.

(iv) *The meaning of the clauses generally:* These considerations bearing on the meaning of the word "diffusion" serve also to emphasize generally that attention should be paid to the function the Resolution was designed to serve. Congress obviously cannot know in advance of investigation the various techniques by which subversive propagandists make their work effective. It cannot know how the subversive propaganda activities are tied to other subversive activities, although it obviously has reason to suspect that there is considerable interlacing. It framed a Resolution to permit the discovery of facts in this field. There is no reason why interpretation of the Resolution to that committee should be premised on a prescience that is absent.

This point may be emphasized further by pointing out that, although the words of the Resolution have been treated separately, this was not necessary. It is clear that the Resolution as a whole includes as one of its essential, fundamental, and separable charges, that the Committee should investigate the propaganda and propaganda activities of foreign instigated subversive groups, and the related ways in which such propaganda and activities have impact on matters as to which legislation would be possible and useful. The difficulty with petitioner's argument that the Resolution does not cover the investigation undertaken here is that it ignores the facts which the

Committee's work, if nothing else, had made clear: that the whole network of Communist activity centers around propaganda and propaganda activities. Communist infiltration of defense plants is an aspect and object of propaganda activities in those plants. The Committee thought this and, as we have pointed out, Congress endorsed that view. Congress never appears to have thought that the Committee was construing "diffusion", or "extent, character, and objects" or "propaganda activities" too broadly. The criticism of the Committee has been directed at the words "un-American" and "subversive". Nobody has ever doubted that, if the propaganda were adequately described, it should be possible to investigate it fully. This does not mean, of course, that guidance to the witness is in fact absent. For purposes of this case, the heart of the authorization is still only subversive propaganda instigated from a foreign country. That, as we have shown, is clear enough. But the Resolution also assures that the techniques of diffusion of subversive propaganda will be fully subject to investigation, rather than partially limited by arbitrary notions separating the propaganda technique from the propaganda.

2. *The Resolution, on its face, does not violate the First Amendment*

(a) Petitioner urges that the allegedly broad language of the Resolution and the action of

the Committee thereunder violates his Constitutional right of freedom of speech and of free political association. We have already shown (*supra*, pp. 73–77) that, in so far as the Resolution applies to Communist activity, it is clearly constitutional. We have further shown (*supra*, pp. 86–95) that, as the Resolution is reasonably to be interpreted, it is designed to authorize an investigation into the same kinds of evils which Communist propaganda and propaganda activities engender and represent. In our view, "subversive" and "un-American" "propaganda" and "propaganda activity" are clearly of the same order as Communist activity. Accordingly, it would seem clear that the Resolution, on its face, does not violate the First Amendment.

(b) The fact that the Resolution may authorize an investigation into both illegal advocacy and also into speech which Congress may not constitutionally proscribe, does not render it unconstitutional, for surely Congress may authorize one of its committees to investigate as to where it should and may attempt to draw the line between the legal and the illegal.

There is a well recognized field for legislation with respect to propaganda activities, notwithstanding the existence of constitutional limitations. From the information which the Committee receives, it conceivably could conclude that certain propaganda activities have reached

the stage where they present a "clear and present" danger of bringing about a substantive evil, such as the overthrow of our form of government by means inconsistent with the Constitution, and that remedial legislation is necessary. Cf. *Dennis* v. *United States*, 341 U. S. 494; *Dunne* v. *United States*, 138 F. 2d 137 (C. A. 8), certiorari denied, 320 U. S. 790. The Committee may learn that foreign governments are carrying on propaganda warfare in our midst with a view to undermining our constitutional principles through aliens who enter our shores. Such information could result, and has resulted, in the amendment of our immigration laws to close even more tightly our boundaries to classes of persons believed to be engaged in such activities. The data disclosed by the investigation might show, and have shown, the necessity for increasing our internal security forces, and legislation and appropriations for this purpose could be initiated. Or the inquiry might disclose, negatively, that appropriations for the investigation of activities of foreign governments should not be decreased—or that they could be.

Illustrative of legislation which might be based upon the information adduced under the Resolution are the Internal Security Act of 1950, the Immigration and Nationality Act of 1950, the statutes regulating correspondence with foreign governments (cf. 35 Stat. 1088, as amended, 47

Stat. 132, 18 U. S. C. (Supp. V) 953), imposing safeguards against seditious conspiracy (cf. 35 Stat. 1089, 18 U. S. C. (Supp. V) 2384), prohibiting measures undermining the morale of the armed forces (54 Stat. 670, 18 U. S. C. (Supp. V) 2387), authorizing government radio broadcasts to foreign countries (Act of January 27, 1948, 62 Stat. 6), prescribing qualifications for government employment, requiring the registration of foreign agents (cf. 53 Stat. 1244, 22 U. S. C. 601, 611), and organizations carrying on certain types of propaganda (cf. 54 Stat. 1201, 18 U. S. C. (Supp. V) 2386).

As the Court of Appeals for the Second Circuit stated in the *Josephson* case, 165 F. 2d at 90:

> Information gained by a committee of this nature, provided its search for the truth may not be frustrated by such obstructive tactics as those employed by the appellant, might well aid Congress in performing its legislative duties, viz., in deciding that the public welfare required the passage of new statutes or changes in existing ones or that it did not. Cf. Landis [*Congressional Power of Investigation*, 40 Harv. L. Rev. 153 (1926)], at pages 208–10. Some of these duties are imposed not only by the principle that the Government shall preserve itself, but, of course, by express provisions in the Constitution. Thus among the purposes of the Constitution, as expressed in the Preamble, are to "insure domestic Tranquility," to "provide for the

> common defense," to "promote the general welfare," and to "secure the Blessings of Liberty." Art. 1, sec. 8 gives Congress the power to "provide for the common Defense," "to raise and support Armies," "to provide and maintain a Navy," "to make Rules for the Government and Regulation of the land and naval Forces," and to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers." Art. IV, Sec. 4 provides that "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion" and on application "against domestic Violence."

The power to conduct an investigation with a view to possible legislation cannot be measured by the scarcity or the abundance of legislative recommendations emanating from the Committee or induced by its efforts.[32] Some of the effects may have been negative in character. Congress may be dissuaded from changing other laws or appropriations, or persuaded that for practical or constitutional reasons no legislation on a subject should be enacted.

The only matter of consequence, however, is whether the subject of the investigation is such that the legislative processes might be aided by

[32] The Committee's legislative recommendations since 1939 are compiled in its 1952 Annual Report. H. Rept. No. 2516, 82d Cong., 2d Sess., pp. 81–88.

the facts disclosed. The facts amply demonstrate that the Resolution pursuant to which the Committee on Un-American Activities operate was designed to give such aid. The Resolution on its face declares that the investigation is to be such as will "aid Congress in any necessary remedial legislation."

(c) Even if the indirect effects of the Committee inquiry, which petitioners argue result from such inquiry, do obtain, nevertheless there is no violation of the First Amendment. First Amendment rights are not absolute. They have never been thought to preclude the compulsory giving of testimony. The power to compel testimony for public purposes—legislative as well as judicial—is essential to the existence and operation of organized society. Not infrequently, compelled disclosures may bring persons into disfavor or disrepute, may result in loss of employment or other manifestations of individual or popular ill-will. And there is, of course, even the more drastic penalty of imprisonment for refusal to testify.

But the need for accurate first-hand information as a basis for governmental action outweighs the interference with personal rights resulting from compelled disclosures. This is so even if the rights are thought to be within the field reached by the First Amendment. For those rights must be balanced against other legitimate and essential needs of the community.

The restraint imposed, by *ad hoc* disclosures of the sort sought here, on petitioner's rights freely to align himself with American political dissent, or worse, is quite moderate and indirect. He is prohibited from nothing. He is subjected to no criminal penalty. He is asked to disclose no belief. He is asked merely to help the Committee, for the benefit of Congress, to determine the organizational structure of UE and its relation to possible Communist infiltration in defense plants in which UE has contracts. The interest of the United States in protecting itself not from ideology, but from possible espionage or sabotage, and from the danger that workers in its most sensitive industries will be insensibly made the tools of a foreign power, is large and urgent. It is plainly as strong as, if not stronger than, that sustained the *Douds* cases.[33]

(d) Inherent in petitioner's argument is the contention that the "right to silence", is protected by the First Amendment. Even if it is accepted that disclosures before the Committee result in unfavorable publicity and discourage persons from subjecting themselves to the risk of

[33] Certainly, the interest involved in this case is as important as those on behalf of which other peripheral restraints on freedom of speech have been sustained. Compare *Beauharnais* v. *Illinois*, 343 U. S. 250; *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288; *United Public Workers* v. *Mitchell*, 330 U. S. 75; and *National Labor Relations Board* v. *Virginia Elec. & Power Co.*, 314 U. S. 469.

similar unfavorable reaction to the expression of their views, it does not follow that the First Amendment is in any way violated. For the sanction growing out of such disclosure is not a legal one, but, at most, the sanction of public opinion, against which the First Amendment does not guarantee.[34]

It was not this sort of indirect consequence of public disclosure with which the First Amendment was concerned. Such indirect consequences may result from any public investigation. The

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[34] See, generally, on this subject Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs* (1948) 47 Mich. L. Rev. 181, 213–222. See also The Report on Congressional Investigations (dated November 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York, which states (pp. 3–4):

> There seems to be prevalent a belief, although somewhat vague, that the individual American is endowed with some sort of a "right of privacy" which exempts him from inquiry into his private affairs. One hears it suggested that such an inquiry violates some protection afforded by the Bill of Rights. We know of no "right of privacy" or constitutional guarantee which makes a citizen immune to the giving of evidence where an inquiry is being made by a legally constituted Congressional committee engaged in a legitimate investigation—any more than a citizen is immune from having to give relevant testimony in a trial before a court of law. The questions, of course, must be relevant to the subject under investigation, and the decisions of the Supreme Court already protect the individual from being required to answer questions which are not pertinent to the inquiry. But, assuming that the question

Amendment does not provide that Congress may not inform the public; it provides that "Congress shall make no law * * * abridging the freedom of speech, or of the press." It was designed to prevent attempts by law to curtail freedom of speech. It was not intended to protect persons against unfavorable public opinion, even though such opinion may be stimulated by disclosures made to or by an investigating body. Nor does the possibility that persons may voluntarily refrain from expressing their views in order to avoid a hostile public reaction mean that any law has abridged their freedom of speech.[35]

D. THE RESOLUTION IS NOT UNCONSTITUTIONAL BECAUSE ONE OF THE COMMITTEE'S PURPOSES MAY HAVE BEEN TO EXPOSE SUBVERSIVE AND UN-AMERICAN ACTIVITIES

Petitioner contends that the Resolution is unconstitutional because the Committee's purpose is

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is material and relevant to an inquiry in aid of a lawful purpose of Congress, we do not believe that the individual is immune from being required to answer merely because the question delves into his private affairs, his previous utterances or his affiliations, political or otherwise. It is not necessary for the purpose of this report to attempt to predict what the courts may hold with respect to the inquiry into an individual's privately entertained belief, except to say that at all events a court would probably insist that the relevancy of such an inquiry be clearly established and that this would be true only in rather exceptional circumstances.

[35] *United States* v. *Rumely*, 345 U. S. 41, is not to the contrary. There, this Court expressly refrained from deciding the relationship between the First Amendment and the Congressional power to investigate.

to publicize, to expose, subversive and un-American activities. The excerpts from the reports of the Committee and the statements quoted by petitioner do indicate that this was *one* of the objects of the Committee. But it does not follow that the Resolution establishing the Committee is unconstitutional.

We shall show that it is entirely proper for Congress to investigate for purposes of disclosure within the field of its constitutional jurisdiction. But even assuming the contrary, petitioner has no valid complaint.

1. In the first place, the existence of an intent to combat subversive activities by publicity does not mean that an inquiry is not also in aid of legislation. A disclosure, for example, that a certain organization was led by persons who were subservient to a foreign government would both tend to open the eyes of the public as to the nature of the organization and be relevant in determining whether legislative regulation of foreign agents were desirable.

Here we are concerned with the contentions that the members of the Committee or of Congress might have some other or even an improper motive. But this does not invalidate a legislative act such as the Resolution here involved, which is constitutional on its face. Compare *Sonzinsky* v. *United States*, 300 U. S. 506, 513–514; *Goesaert* v. *Cleary*, 335 U. S. 464, 467;

Veazie Bank v. *Fenno*, 8 Wall. 533, 548; *McCray* v. *United States*, 195 U. S. 27, 56–59; *United States* v. *Doremus*, 249 U. S. 86, 93–94; *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44, 45.

Even more clearly, the co-existence of a proper and improper purpose by those entrusted with the administration of a Congressional Resolution does not vitiate legislative action. Throughout our history one of the most common criticisms of Congressional committees has been that they were being used by sponsors or members for political or personal reasons distinct from the ostensible aim of aiding the legislative functions of Congress. Cf. Dimock, *Congressional Investigating Committees* (Johns Hopkins University Studies, Series XLVII, No. 1, 1929), p. 164. In *McGrain* v. *Daugherty*, 273 U. S. 135, and *Sinclair* v. *United States*, 279 U. S. 263, similar attacks were made upon the motives of a Congressional committee. Sinclair argued that the purpose of a question put to him was to aid the prosecution in pending litigation and was therefore improper. But this Court stated (p. 295):

> It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought

> to be elicited may also be of use in such suits.
>
> The record does not sustain appellant's contention that the investigation was avowedly not in aid of legislation. He relies on the refusal of the committee to pass the motion directing that the inquiry should not relate to controversies pending in court, and the statement of one of the members that there was nothing else to examine appellant about. But these are not enough to show that the committee intended to depart from the purpose to ascertain whether additional legislation might be advisable. It is plain that investigation of the matter involved in suits brought or to be commenced under Senate Joint Resolution 54 might directly aid in respect of legislative action.

The *Sinclair* case involved refusal to answer a specific question. In the *McGrain* case there was a failure of the witness to appear at all. The Court indicated clearly there that the purpose of Congress was to be determined from the terms of the authorizing Resolution. See 273 U. S. at pp. 170, 172, 175–178. The Court stated (p. 178):

> The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating; and we think the subject-matter was such that the presumption should be indulged that this was the real object. An express avowal of

> the object would have been better; but in view of the particular subject-matter was not indispensable. In the *Chapman* case, where the resolution contained no avowal, this Court pointed out that it plainly related to a subject-matter of which the Senate had jurisdiction, and said "We cannot assume on this record that the action of the Senate was without a legitimate object." * * * In *People* v. *Keeler,* 99 N. Y. 463, * * * the court said (pp. 485, 487): * * * "We are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed, and we have no right to assume that the contrary was intended."

(Pp. 175–176)

> The contention is earnestly made on behalf of the witness that this power of inquiry, if sustained, may be abusively and oppressively exerted. If this be so, it affords no ground for denying the power. The same contention might be directed against the power to legislate, and of course would be unavailing. We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses.

2. Since the Resolution was predicated on the need for information for legislative purposes, it is unnecessary to decide whether Congress has authority to investigate for the sole purpose of

bringing information to public attention. There is considerable support, however, among students of Congressional power for the view that the "informing function" of Congress in itself would have brought the investigation within its constitutional competence.[36] Potts, *Power of Legislative Bodies To Punish for Contempt*, 74 U. Pa. L. R. 691, 811; Galloway, *Investigative Function of Congress*, 21 Am. Pol. Sc. Rev. 47, 62; Cousens, *Investigations Under Legislative Authority*, 26 Georgetown L. J. 905, 918; McGeary, *The Developments of Congressional Investigative Power*, pp. 104. Woodrow Wilson expressed the opinion that

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them

[36] It has been suggested that the function of informing the public is implied and inherent in the legislative purpose. Landis, *Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 205, 206, n. 227 (1926). A representative democracy relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation.

> by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.[37]

We submit that Congress may under the Constitution undertake investigations for the purpose of publicizing information at least so long as the matters to be disclosed are related to a substantive congressional power. It is settled that Congress in the exercise of its regulatory power may authorize an administrative agency to receive and publicize information. *Electric Bond & Share Co.* v. *Securities & Exchange Commission*, 303 U. S. 419. In the *Electric Bond & Share Co.* case, this Court observed, in relation to the registration provisions of the Public Utility Holding Company Act, that "the requirement of information is in itself a permissible and useful type of regulation" (p. 439). This method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. E. g., newspapers using the mails, 37 Stat. 533, 39 U. S. C. 233 (*Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288); Securities Act of 1933, 48 Stat. 74, 15 U. S. C. 77a; Food, Drug and

[37] Wilson, *Congressional Government*, as quoted in *United States* v. *Rumely*, 345 U. S. 41, 43.

Cosmetic Act, 52 Stat. 1040, 1041, 21 U. S. C. 321; Alien Registration Act, 54 Stat. 673, 8 U. S. C. 452; registration of lobbyists, 60 Stat. 839, 2 U. S. C. 261; registration of foreign agents, 52 Stat. 631, 22 U. S. C. 611; registration of certain subversive organizations, 54 Stat. 1201, 18 U. S. C. (Supp. V) 2386.

Indeed, the principle of disclosure has been advanced by persons zealous to protect civil liberties as the best method of dealing with the Communist problem in this country. The Report of the President's Committee on Civil Rights (*To Secure These Rights,* U. S. Govt. Printing Office, 1947) concluded that (pp. 52, 53):

> The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups.
>
> * * * * *
>
> The federal government * * * ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion.

See also the *Josephson* case, *supra,* 165 F. 2d at 89.

Inasmuch as propaganda emanating from foreign sources may affect the foreign relations of the United States, the national defense, and the

obligation of the United States to guarantee to each state a "Republican Form of Government" and protection against both "Invasion" and "domestic Violence," we think it clear that Congress has power under the Constitution to adopt a program of publicity and disclosure as a public safeguard against subversive propaganda which Congress does not wish to, and perhaps cannot, prohibit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals be affirmed.

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JANUARY 1954.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 9

JULIUS EMSPAK,
Petitioner,
vs.
UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
ERNEST ANGELL,
OSMOND K. FRAENKEL,
EMANUEL L. GORDON,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 67

JULIUS EMSPAK,
Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

The Interest of the American Civil Liberties Union

This brief *amicus curiae* is filed, pursuant to Rule 27(9) of the Rules of the Court, with consent of the parties, which is being filed simultaneously herewith.

The leading domestic problem of our day is the balancing of the needs of individual freedom with those of national security. We believe that in fighting the menace of Communist totalitarianism, Congress can and should enact such additional legislation as might be necessary to deal with the menace of genuine acts of subversion, for the Communist Party is distinctively and essentially characterized by both extreme anti-democratic doctrine and practice, and by obedience to the government of the Soviet Union,

a despotic power which dominates a world-wide revolutionary movement unprecedentedly threatening the national independence and individual civil liberties of all other countries. Some of those persons who submit to the Communist Party's rigid totalitarian discipline (whether formal members or not) and some of its leaders have been convicted of illegal, secret conspiracies or illegal acts. We recognize that Congress has a right to investigate this menace with a view to formulating appropriate legislation, but we are opposed to any tendency by which American democracy might, in combatting this menace, pay the supreme compliment of imitation of Communist tyranny by the abridgment of freedom of speech, press or association. It is our belief that while the Senate of the United States has authorized an investigation consistent with civil liberties into genuine subversive acts, the mandate of the House Committee on Un-American Activities, whose only authorized purpose is to investigate propaganda,[1] and whose stated purpose in this inquiry was to "expose Communism," represents in itself a threat to American democracy both in general and in this specific case. We have also opposed the Committee from its

1. Rule XI(1)(q)(2) of the Rules of the House of Representatives, as amended by Section 121(b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 828, and thereafter adopted by the House of Representatives (H. Res. 5, 81st Cong., 1st Sess., 95 C.R. 10 (1949)), provides:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

inception because of the vagueness of the term "un-American" in its charter. We have been opposed to the Committee because of its past arbitrary procedures and obviously political partisan prejudices, but in all fairness to the Committee, we must point out that their hearing procedures have recently improved.[2]

There are in this case vitally important questions as to the proper methods by which to raise the privilege against self-incrimination and precisely what conduct constitutes contempt. However, we file this brief solely in reference to the First Amendment questions which this Court has agreed to review in this case,[3] and solely because of our interest in civil liberties.

Statement of Facts

The petitioner, Julius Emspak, was indicted and convicted for contempt of Congress in having refused to answer questions during the course of an investigation by the House Committee on Un-American Activities, which, under the terms of its mandate, is authorized to investigate solely un-American propaganda activities. In the course of its investigation, Emspak refused to answer questions as to whether he knew various individuals or officials of

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2. "Freedom—Justice—Equality, Report on Civil Liberties, January 1951—June 1953." ACLU (1953), p. 78. The Union, however, severely criticized the chairman of the Committee for his recent conduct in the case of Mrs. Agnes Meyer, and pointed out the continued political partisanship of the Committee in the Oxnam hearing. Id. at 78-79.

3. While the Court has not been asked to review the constitutionality of the Committee's mandate on its face, we discuss this question below (as it has been discussed in petitioner's brief) because we can conceive of no specific application of the mandate so different from the one at bar which might conceivably be upheld as constitutional. In other words, we do not see how the Committee's mandate can ever be constitutionally applied.

the United Electrical Workers; whether certain persons were UEW officials; and about his affiliation with allegedly Communist organizations and membership in the Communist Party. During the course of the investigation, the one-man subcommittee which questioned him stated that the purpose of the inquiry was to "expose Communism." This Court has agreed to review the questions of whether the Committee's mandate, "as construed and applied herein, abridged the petitioner's freedom of speech, press and assembly in violation of the First Amendment to the Constitution", and "Whether the First Amendment protects a witness before a Congressional committee against the compulsory disclosure of the identity of trade union officials with whom he is associated and of his political views and affiliations."

The Issues

The sole issues with which we are concerned are (1) the unconstitutionality of the mandate of the House Committee on Un-American Activities, on its face and as applied; (2) the departure by the Committee from the terms of its mandate and from constitutionally permissible investigation; (3) the violation of the First Amendment in the particular questioning of the petitioner here.

POINT I

The mandate of the House Committee on Un-American Activities is unconstitutional, both on its face and as applied.

We do not wish to burden this Court with repetition of the arguments contained in the petitioner's brief, which we believe amply demonstrate the unconstitutionality of the mandate of the Committee, both on its face and as

applied here. We wish solely to present additional arguments in this regard to this Court. This brief is therefore in no sense a complete analysis of the problems involved.

This Court has emphatically rejected the implication that "The power of government over beliefs is as unlimited as its power over conduct and [that] the way is open to force disclosure of attitudes on all manner of social, economic, moral and political issues, * * *." The Court stated "that that result does not follow 'while this Court sits.'" *American Communications Asso.* v. *Douds*, 339 U. S. 382, 410. We submit that the charter of the House Committee on Un-American Activities, as it has been consistently applied by the Committee itself and on its very face, is nothing less than a legislative authorization (at least where unfriendly witnesses are concerned) to "force disclosure of attitudes on all manner of social, economic, moral and political issues." If this language in *Douds* is to have meaning, then the contempt conviction below must be declared invalid.

Further authority is found in the *Douds* case to demonstrate the unconstitutionality of the Commitee's mandate. We concede that the Committee does not directly regulate speech, but we think it amply proved in petitioner's brief that the Committee's operations have tremendously circumscribed the exercise of First Amendment freedoms, as demonstrated by the extensive intolerance of dissent and the fear to express dissent, so prevalent in the country today. Where there are such effects upon the exercise of First Amendment freedoms, the Court must weigh those effects against the public interest to be protected. As this Court stated in *Douds*, "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of

these two conflicting interests demands the greater protection under the particular circumstances presented. * * * We must recognize, moreover, that regulation of 'conduct' has all too frequently been employed by public authority as a cloak to hide censorship of unpopular ideas." *Id.* at 399.

We submit that investigation can result in abridgment of freedom of speech too—the power to investigate into propaganda and to make people account for what they have said in the field of propaganda obviously operates as a threat against complete expression. Cf. *U. S.* v. *Rumely*, 345 U. S. 41, 46. That investigation of propaganda has here been employed by public authorities as a cloak to hide censorship of unpopular ideas is inaccurate only to the extent that the Committee has not even used its power as a cloak; it has openly indicated, as set forth in petitioner's brief, that it wishes to suppress certain ideas. The Committee itself has stated that its way of exposure is "more effective than a Gestapo." 77th Cong., 1st Sess., H. Rept. 1, 23 (1941). Speech and association cannot be free when speech or association today may mean a subpoena tomorrow.

The Court must weigh, against this abridgment of freedom of speech, the interest of Congress in investigating to gain information necessary to the formulation of legislation.[4] The latter interest is of course one which

4. We wish to point out the non-applicability to this case of the following doctrine: that in determining "need for regulation of particular forms of conduct," this Court "is in no position to substitute its judgment * * * for that of Congress." (*American Communications Asso.* v. *Douds*, 339 U. S. 382, 400-401). For here Congress has itself rendered conflicting judgments, in that the Senate of the United States, unlike the House of Representatives, has never found it necessary or desirable to create a committee to investigate un-American propaganda.

demands the greatest protection. The menace of Communist totalitarianism may well require additional congressional legislation, and investigative inquiry is a prerequisite to such legislation. But there are many different things which may be investigated, and there are many different ways of investigating. We demonstrate in Point III below the possible alternatives open to Congress to investigate genuine dangers to our democracy.

POINT II

The Committee, by making the investigation here in order to "expose Communism", departed both from its mandate and from constitutionally permissible standards.

A. The Committee Departed From the Terms of Its Mandate.

While the duly authorized agent of the Committee examining petitioner stated that the Committee's purpose in this investigation was to expose Communism, the trial court below permitted the government to introduce evidence to the effect that this was not the real purpose of the Committee. We do not quarrel in any way with the apparent concession by the United States that a court may go behind the stated purpose of the legislative inquiry to determine whether, whatever was stated at the inquiry, the real purpose was something else. We urge, however, that this Court state clearly that it is always open for witnesses accused of contempt to do this, too, for the courts have not previously recognized this doctrine.[5]

5. For example, in the case of *Eisler* v. *United States*, the witness there had offered to prove that the House Committee brought him before it to harass and punish him for his political beliefs, not to

The Committee is authorized merely to investigate. It is nowhere authorized to expose. It therefore exceeded the terms of its mandate.

B. Even if the Committee Had Been Authorized to "Expose", It Would Have Been Acting Beyond its Constitutional Power.

No legislature has any right to "expose" anything merely for the sake of exposure. Its inquiries must be limited to formulation of legislation. Our government is one of limited powers as the Tenth Amendment makes explicit. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." As this Court has stated:

> "The powers of Congress itself, when acting through the concurrence of both branches, are dependent solely on the Constitution. Such as are not conferred by that instrument, either expressly or by fair implication from what is granted, are

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interrogate him upon any matter relevant to the Committee's inquiry, which proffer was rejected (R. 101, 102-119, 134, 135). [Cert. granted, 335 U. S. 857 (1948); case removed from docket, 338 U. S. 189 (1949); cert. dismissed, 338 U. S. 883 (1949).] Such proffers may be vitally important. For example, Sen. Joseph McCarthy recently announced that he would subpoena before his committee former Brig. Gen. Telford Taylor to inquire whether he was receiving government funds as a reserve officer, because Mr. Taylor had interested himself in the Senator's investigation of "potential espionage" at Fort Monmouth. *N. Y. Herald Tribune*, Dec. 11, 1953, pp. 1, 42. The Senator has never embarked upon any investigation of use of government funds for reserve personnel; he has never subpoenaed persons who merely interested themselves in his investigations. Since Mr. Taylor had only a few days previously vigorously criticized the procedures of the Senator's committee, the real purposes of the inquiry are seriously open to challenge. There should be opportunity in such a case to prove that the inquiry is other than a proper one. If this opportunity is not provided, then surely it was error to admit evidence from the government as to the Committee's purpose in the case at bar.

> 'reserved to the States respectively, or to the people.' Of course, neither branch of Congress, when acting separately, can lawfully exercise more power than is conferred by the Constitution on the whole body. * * *"
>
> *Kilbourn* v. *Thompson*, 103 U. S. 168, 182.
>
> "And it is a necessary deduction from the decisions in Kilbourn *v.* Thompson and re Chapman that a witness rightfully may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry."
>
> *McGrain* v. *Daugherty*, 273 U. S. 135, 176.

Under the American system, when something lying beyond the limited powers of our government (which is not the nation, but only one instrumentality of the people) needs exposing—as often happens—then the people themselves do the exposing, by free speech, not the legislature.

POINT III

The questioning of petitioner in this case violated his rights under the First Amendment to the United States Constitution.

The crucial question asked by the House Committee on Un-American Activities is usually whether the witness is or has ever been a member of the Communist Party. In the case at bar additional questions relevant to other associations were also asked. The ACLU maintains that a person, by refusing to answer on the ground of the First Amendment's protection of free association, may challenge the propriety of any question concerning his or another person's Communist or other totalitarian associations.

However, we submit that this Court need not now pass upon the question of whether the First Amendment protection of free association and speech is always violated when such questions are asked by other legislative committees, with different mandates, in every conceivable circumstance. Such cases may be decided by this Court as they may arise. We limit our argument here to the point that these questions when asked by the House Committee on Un-American Activities violate First Amendment rights.

The sole purpose and power of the Committee is to investigate propaganda and matters relevant thereto. Thus, while it might be contended that an inquiry into associations is not a violation of the First Amendment if connected to an inquiry into possible illegal activities, or those which might be made illegal, we do not discuss those questions since we deal here with the question of investigation into associations relevant only to propaganda deemed un-American. The associational questions can be relevant to the inquiry only when connected with propaganda. If the First Amendment is a restriction upon congressional inquiry, and no one can doubt that it is—for Congress cannot by inquiry accomplish that which it is forbidden to do by legislation—then it is clear that an inquiry directed towards propaganda (which is after all nothing more than the exercise of free speech) is the most flagrant violation of the First Amendment which is possible by inquiry. For it takes courage in these days to exercise the right to speak freely, when one knows that —apart from the social consequences following in this day and age from voicing unpopular ideas—any expression of speech, or any association relevant to the exercise of free speech, may enable a congressional committee to subpoena him and make him account for every chapter of his life.

Congress cannot blanketly punish those who advocate what Congress considers to be un-American doctrines.

But the Court would have to shut its eyes to life in America today to believe that the Committee by its investigating does not in a very real sense inflict punishment. Refusal to answer is punishable, of course, by contempt. This usually means a jail sentence. But even a witness who may refuse to answer on valid grounds, as well as one who does answer, is nonetheless punished in a very real sense. He is not imprisoned, but he is made a pariah. He is not imprisoned within a jail, but the effect of the episode is frequently to bar him from gainful employment in his accustomed field.[6] He is not fined, but his income may diminish almost to the vanishing point. In addition, his social standing in the community, his familial relationships, his own mental well-being—all these are severely injured.

The compulsory enunciation of one's views is proscribed as a complete negation of free speech, though free speech is a mechanism for obtaining the expression and comparison of conflicting opinions. *West Virginia State Bd. of Education* v. *Barnette*, 319 U. S. 624 (1943). Not only previous censorship, but subsequent punishment is prohibited, where the speech in question relates to

6. For example: Movie actor Larry Parks was subpoenaed before the Committee in 1951, admitted past membership in the Communist Party, but refused to publicly tell the names of other Party members he knew. "Since testifying, Parks hasn't been able to get a film job." *Variety*, Aug. 19, 1953, p. 2, col. 3. This was in spite of the fact that "The Committee on several occasions criticized the studios for their refusal to employ the actor." *Ibid.* Mr. Parks apparently did name names in executive session in 1951, however, though the testimony was not made public until 1953. *6 Investigation of Communist Activities in the Los Angeles Area*, Hearings before the Committee on Un-American Activities, 1953, pp. 2299-2308 (1953). So far as we are aware, Mr. Parks is nonetheless still unemployed in the film industry.

Moreover, the Committee's listings have been used in the radio and television industry as one basis of a blacklist in employment. Miller, *The Judges and the Judged* (Doubleday & Company, Inc., 1952), *passim*, esp. pp. 20, 128, 134.

matters of public concern, for punishment and the threat of punishment operate to restrain the free expression of views. By the same principles, the revelation under governmental compulsion of opinions and ideas concerning public policies violates the First Amendment.

Much wisdom has emanated from brave leaders, but the world's wisdom and the nation's progress owe something to the timid, too. Where public matters are in issue, the transitory majority provides no insurance of ultimate truth, and final acceptance has often been achieved by ideas hesitantly advanced, initially ridiculed or even brutally suppressed. The world of ideas would be impoverished indeed if dissenters could only raise their voices to their immediate circle of friends, their own organization or whatever group they select for audience.

Since the Committee's mandate does not define its authority in terms of a specific area over which Congress has power to legislate and since the witness may refuse to answer if the matter is not pertinent to an inquiry Congress may lawfully authorize in aid of one or another of its legislative powers, *Kilbourn* v. *Thompson*, 103 U. S. 168, the witness is put to the task of determining whether the evidence demanded is pertinent to any possible exercise of Congressional power. The witness is thus required to assume the burden of mental review of all those powers, and to assume the risk of contempt, if the evidence demanded is, in one sense or another, pertinent to any one of them. Because this is so, the witness rather than risk prosecution may disclose information which the Committee has no right to exact. Since such compulsory disclosure is threatened by the mandate itself, it operates to burden speech in this way too. For as we have said, the dissenter who may be called to account before a hostile audience may prefer silence altogether. A nation which relies in its search for truth upon the free circula-

tion of ideas cannot afford to put the price of dissent so high.

These threats to the exercise of freedom of speech or association solely in an effort to investigate propaganda strike us as an obvious invasion of the First Amendment. It might be argued that such a result should be tolerated if it is necessary for the legislature to make such a broad inquiry. But we submit that it is entirely unnecessary, as the United States Congress itself has shown.

Senate Resolution 366, 81st Congress, created what is popularly known as the Subcommittee on Internal Security of the Senate Judiciary Committee. The Subcommittee's purpose is not to investigate propaganda, but to investigate subversive acts and the administration of the internal security laws.[7] We have never opposed the charter of this Subcommittee, for we believe that Congress has a right to investigate genuine subversive acts. Whatever may be this Court's eventual finding on the question of whether inquiries may be made into beliefs and associations by a

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7. The Resolution creating the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, contains the following mandate:

> "*Resolved*, That the Committee on the Judiciary, or any duly authorized subcommittee thereof is authorized and directed to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effect of subversive activities in the United States, its Territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence."

The Resolution was agreed to on December 21, 1950 (96 C. R. 16,—872). The Subcommittee was continued by S. Res. 46, 83rd Cong., agreed to on January 30, 1953 (99 Daily C. R. 710).

committee designed to investigate subversive acts, inquiry into beliefs and associations pursuant to an investigation of propaganda must clearly be considered a violation of the First Amendment.

The failure of the House Committee's charter to limit the scope of its inquiry to such matters as might be relevant to Congress' power of legislation to combat the evil, requires the balance to be struck in favor of freedom, not authority.

The Committee was created for the express purpose of investigating material compiled by those who exercise their constitutional right of freedom of speech and association—"propaganda". By inquiring into their associations and beliefs in disseminating the product of First Amendment rights, the Committee only compounds the existing evils of its charter.

CONCLUSION

We respectfully urge that this Court reverse the judgment below and declare unconstitutional the mandate of the House Committee on Un-American Activities, both on its face and as applied herein, and declare the questioning of this petitioner in its investigation both a departure from the terms of its mandate and from constitutionally permissible investigation, as well as in violation of the First Amendment.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 67

JULIUS EMSPAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 352–363) is reported at 203 F. 2d 54. The opinions of the District Court denying petitioner's motions to dismiss the indictment (R. 116–119, 119–131) are reported at 95 F. Supp. 1010, 1012. The opinion of the District Court at the close of the trial (R. 224–227) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 19, 1952 (R. 363). A peti-

tion for rehearing was denied on April 13, 1953 (R. 371). The petition for a writ of certiorari was filed on May 13, 1953, and granted on October 12, 1953 (R. 371–372). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence supports the conclusion reached by the district court, and sustained by the court of appeals, that petitioner's refusal to answer certain questions put to him by a subcommittee of the House Committee on Un-American Activities was not based on a claim of privilege against self-incrimination.

2. Whether a conviction for refusal to answer questions asked by a Congressional committee cannot be sustained unless it is shown that the witness was specifically directed to answer the questions involved, or whether it suffices to show that the witness understood that the "answers" made by him were regarded by the committee as a refusal to answer, that the grounds asserted by him as a basis for such refusal to answer were clearly rejected by the committee, and that he was expected to answer the questions.

3. Whether the questions asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and if so, whether that Resolution, as

so construed, is unconstitutional, in that (a) it exceeds the investigatory or legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment.[1]

STATUTE AND RESOLUTION INVOLVED

2 U. S. C. 192, R. S. 102, as amended, provides as follows:

> Refusal of witness to testify.
>
> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

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[1] Petitioner's brief also raises broad questions as to the constitutionality of the Resolution as generally applied by the Committee in other situations. Although, in the Government's view, such questions are not presented by the record in this case and hence are not properly before the Court, they are discussed *infra*, pp. 77–110.

Rule XI of the Rules of the House of Representatives, as amended by Section 121 (b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 812, 823, 828, and thereafter adopted by the House of Representatives (H. Res. No. 5, 81st Cong., 1st sess., 95 Cong. Rec. 10–11) provides:

Rule XI

Powers & duties of committees

(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively:
* * *

* * * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

STATEMENT

On November 20, 1950, the petitioner, Julius Emspak, was indicted by a grand jury of the United States District Court for the District of Columbia for having wilfully refused to answer 68 questions before a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives, in violation of the provisions of 2 U. S. C. 192 (*supra*, p. 3), which provides, *inter alia*, that a witness summoned be-

fore a committee of Congress who refuses to answer "any question pertinent to the question under inquiry" shall be guilty of a misdemeanor (R. 4–13).

He pleaded not guilty (R. 13–14), and made various motions to dismiss the indictment (R. 14–17), all of which were overruled by the trial court. See R. 116–119, 119–131, 95 F. Supp. 1010, 1012. Later, on the trial of the case, the following was stipulated or shown:

The petitioner was summoned by the Committee to appear as a witness at a series of hearings conducted in August and December of 1949. According to the Committee counsel, the purpose of the hearings was to investigate into "the infiltration of Communist labor unions working on defense projects, from the standpoint of individuals who weren't actually working in the plant but who were officials of the union, as distinguished from those who had actual contact with classified material." (R. 157.) The hearing to which the petitioner was called, the counsel also testified, "was set up for the particular purpose of developing the practices and duties of various officials of the national organization of UE[2] with the idea of determining whether or not there was a difference in practice, in certain Government agencies, in screening or clearing officials of the union for security purposes in plants where the Atomic

[2] United Electrical, Radio, and Machine Workers of America.

Energy Commission, or the Army, Navy, and Air Force, were having secret Government projects worked upon" (R. 157).[3]

[3] The exact language of the Committee counsel at the hearings does not appear in the record. It does appear in the published Committee hearings. Hearings, House Committee on Un-American Activities, 81st Cong., Hearings Regarding Communist Infiltration of Labor Unions, pp. 541–542. The Committee counsel there stated at the opening of the hearings:

> Mr. TAVENNER. Mr. Chairman, the purpose of this hearing is to inquire into the question of Communist affiliation or association of certain members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense.
>
> The advisability of recommending legislation providing for security standards, and the advisability of tightening present security requirements in industrial plants working on certain Government contracts, was considered by the committee in both its open and executive sessions on June 6, 1949, as a result of the testimony of Leona and Joseph Franey and Loren G. Haas.
>
> It will be remembered that Mr. Wood, the chairman of this committee, offered H. R. 3903, section 2 of which would make it an offense for any individual employed in connection with the performance of any national defense contract "(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General; (2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or (3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1) or (2) of

The authority of the Committee to conduct investigations and to subpoena witnesses in connection therewith depends on House Rule XI (q) (*supra,* pp. 4–5), the crucial language of which authorizes the Committee on Un-American Activities to make, from time to time—

> * * * as a whole or by subcommittee * * * investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Pursuant to the Committee's subpoena, petitioner, who was general secretary and an ex-officio member of the Executive Committee of UE, appeared before a subcommittee of the Committee on December 5, 1949 (R. 239, 159) at which time

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this section." This bill was referred to this committee.

It is the further purpose of this hearing to develop facts for the committee's consideration in connection with this resolution.

* * * * *

It does not appear that petitioner was present on this particular day of the hearings, although it does appear that petitioner was following, at least, the press reports as to the activities of the Committee (R. 171).

he was asked a number of questions, for the most part related to the structure and activities of the United Electrical, Radio, and Machine Workers of America (hereinafter called UE) and to his activities as editor of the UE News, the journal of the union (see R. 159–199, 37).

These questions petitioner answered. But to sixty-eight of the questions asked him by the subcommittee, he made responses which the Committee did not regard as answers. Fifty-eight of these questions asked in substance that he state whether or not he knew certain named individuals and could disclose whether or not those individuals presently held or had held certain positions in the UE (R. 5–12).[4] Eight of the questions related to petitioner's possible membership in the Communist Party, present or past, and to various evidences of that membership (R. 12–13); and the other two asked about his "affiliation" with the National Federation for Constitutional Liberties and his "association" with the Civil Rights Congress (R. 12).[5]

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[4] Petitioner showed by affidavit, in support of his motion to dismiss the indictment, that 17 out of the 50 persons about whom he was questioned, and refused to answer, had been charged before a Congressional committee as having Communist and Communist-front affiliations (R. 67–85); and that the UE itself was thought to be Communist dominated (R. 51–56).

[5] As to these questions, petitioner showed by various documents introduced in support of his motion to dismiss the indictment that he had been charged with being a Communist (R. 29–36, 47–49, 50). He also stated that the two named

Petitioner's refusal to answer these questions, which he now contends was based on a claim of privilege against self-incrimination, but which he then claimed was not a refusal at all, may be illustrated by the questions and answers to some of the earlier questions, since the later answers were in general a reference to the earlier ones. The relevant colloquy follows (R. 167–173):

> Mr. TAVENNER [Committee Counsel]. Mr. Emspak, are you acquainted with Joseph Persily?
>
> Mr. EMSPAK. Mr. Chairman, I would like to say something at this point.
>
> Mr. MOULDER [Subcommittee Chairman]. You mean in response to the question?
>
> Mr. EMSPAK. I will answer the question; yes, in response to the question and as a statement of position.
>
> * * * * *
>
> As an individual, I would like to say one thing, and that is this: The line of questioning that counsel is developing now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am—
>
> * * * * *

---

organizations had been said to be Communist front groups (R. 32).

* * * I owe to the rich heritage and tradition of this country. I do not believe that a committee of this kind, especially in view of the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country, too.

Mr. MOULDER. I want to give you full opportunity to express yourself in answer to the question, but you are making an oration now.

Mr. EMSPAK. It is not an oration. It happens to be a very profound personal feeling.

Mr. MOULDER. What is the question?

Mr. TAVENNER. The question is: Are you acquainted with Joseph Persily.

* * * * *

Mr. EMSPAK. Because I have a stake in this country—

Mr. MOULDER. You are not answering the question. He asked you if you are acquainted with this man.

Mr. EMSPAK. I will answer it.

Mr. MOULDER. Are you or not?

Mr. EMSPAK. I was on the verge of answering it.

Mr. MOULDER. If you have any explanation to make you will be permitted to do so after you answer the question.

Mr. EMSPAK. Because of my interest in what is going on these days, because of the activities of this committee—

Mr. MOULDER. Are you going to answer the question?

Mr. EMSPAK. Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

Mr. MOULDER. Do you think it corrupts you to answer the question?

Mr. EMSPAK. I certainly do.

Mr. MOULDER. Why does it corrupt you?

Mr. EMSPAK. Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country.

Mr. MOULDER. You are not going to take over this committee.

Mr. EMSPAK. I don't want to.

Mr. MOULDER. And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

Mr. TAVENNER. Are you acquainted with Joseph Persily?

Mr. EMSPAK. For the reasons I stated before, I answered it.

Mr. MOULDER. Then you refuse to answer the question?

Mr. EMSPAK. No. I answered it.

Mr. TAVENNER. Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER. The record will reveal that you have not answered the question.

Mr. EMSPAK. I have answered it to the best of my ability under the circumstances.

Mr. MOULDER. Any further questions?

Mr. TAVENNER. Yes. In what capacity is Joseph Persily associated with the UE at this time?

Mr. EMSPAK. It is the same question over again. I will give the same answer.

Mr. TAVENNER. Is he an organizer in the UE?

Mr. EMSPAK. Mr. Chairman, it is the same question.

Mr. TAVENNER. You refuse to answer that?

Mr. EMSPAK. I answered it.

Mr. TAVENNER. Are you acquainted with Albert Smith?

Mr. EMSPAK. The same answer applies to that.

Mr. TAVENNER. In other words, you are refusing to answer whether you are acquainted with him or not?

Mr. EMSPAK. I have answered the question as I see the answer.

Mr. TAVENNER. Is he employed by UE?

Mr. EMSPAK. Mr. Chairman, I answered the question.

Mr. MOULDER. Could you tell us who these people are, Mr. Counsel?

Mr. EMSPAK. Excuse me, please.

(Witness confers with his counsel.)

Mr. TAVENNER. Joseph Persily and Albert Smith are the two persons whose names were mentioned.

Mr. MOULDER. Who is Joseph Persily?

Mr. TAVENNER. I thought he was connected with the UE, but I am unable to understand from this witness what the connection is, if any.

Mr. MOULDER. Do our records reveal who he is?

Mr. TAVENNER. I do not know whether they do or not, Mr. Chairman.

Mr. Emspak, has Max Helford ever been connected with the UE as a field organizer?

Mr. EMSPAK. Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to

perhaps frame people for possible criminal prosecution.

I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee. I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

Mr. MOULDER. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

Mr. EMSPAK. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——

Mr. MOULDER. Do you know them or not?

Mr. EMSPAK. That does not concern this committee at all.

Mr. MOULDER. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. EMSPAK. No, I don't think this committee has a right to pry into my associations. That is my own position.

Mr. TAVENNER. Is Max Helford at the present time a field organizer for the UE?

Mr. EMSPAK. Mr. Chairman, that is repetition of basically the same question, and the same answer stands.

Mr. TAVENNER. Was Phil Saba originally from local 155?

Mr. EMSPAK. I answered that question.

Mr. TAVENNER. And is he now a field organizer for the UE in district 1?

Mr. EMSPAK. I answered that question and that is the only answer I will give on any of my associations, for the reasons stated.

Mr. TAVENNER. Is Hank Rhine presently an international representative of the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Jack Gorelick now affiliated with the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Ernest Moyer a field organizer for UE in the Eastern area?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Do you know James Lustig?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is he an international representative of UE?

Mr. EMSPAK. We can go on endlessly like this, I suppose, but the same answer holds.

* * * * *

Similar questions followed, to most of which petitioner responded by saying "Same answer." At one point in the colloquy, the following occurred (R. 174):

Mr. TAVENNER. Is Louis I. Sorti a field organizer of the UE?

Mr. EMSPAK. Same answer.

Mr. MOULDER. Same answer is your refusal to answer for the reasons given?

Mr. EMSPAK. I gave specific reasons why I felt I should not participate in this kind of questioning, and I stand by that.

And at a later point, the following occurred (R. 178):

Mr. TAVENNER. Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?

Mr. EMSPAK. I answered that, Mr. Chairman.

* * * * *

Mr. MOULDER. You mean you refuse to answer for the reasons previously stated?

Mr. EMSPAK. I answered it in the terms I did when I said as far as my associations and affiliations are concerned, that is something a committee of this kind should not pry into.

And, at another point in the later colloquy, the following occurred (R. 194):

Mr. TAVENNER. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York?

Mr. EMSPAK. I answered that.

Mr. MOULDER. You mean you refuse to answer for the reasons you gave at the beginning?

> Mr. EMSPAK. That is correct. I answered the best way I know how.

A report of the Committee was thereafter, on August 10, 1950, submitted to the House, reciting that petitioner had been called before the Committee and had refused to answer questions "pertinent to the subject under inquiry" (R. 275), which were set out verbatim, and concluding that he was therefore in contempt of the House of Representatives (R. 255–275, 240). The report was thereupon, by House Resolution of the same day, certified to the United States Attorney for the District of Columbia for appropriate action (R. 240).

At the conclusion of the trial, the judge, sitting without a jury, found petitioner guilty, specifically stating that "I find nothing in the record which indicates that the [petitioner] entertained the slightest fear or apprehension of federal prosecution" (R. 225); that "The [petitioner] failed to assert that right [the privilege against self-incrimination] and revealed no such apprehension" (R. 227); and otherwise made a general finding of guilty. Petitioner was thereupon sentenced to imprisonment for a period of six months and to pay a fine of $500 (R. 136–137).

On appeal, the judgment was affirmed by the Court of Appeals, sitting *en banc*. With respect to the issues presented by the grant of certiorari, the court was divided as follows: (1) Six mem-

bers of the court were of the view that petitioner had not in fact claimed the privilege against self-incrimination, but had made his objections more broadly to the general activities of the Committee (R. 356–357). Judges Fahy, Bazelon, and Edgerton took no position on this issue. (2) Three of the members of the court who voted to sustain the conviction were of the view that the Committee had made it sufficiently clear to the petitioner that he was required to answer the questions in the indictment, and that no specific direction to answer, *in haec verba,* was required (R. 361). The three remaining members of the majority were of the view that the conviction could be sustained if the petitioner merely refused to answer a proper question (R. 355–356). The dissenting judges thought that, under the ruling in the companion *Quinn* case,[6] a new trial was required for a determination by the District Court whether petitioner had been clearly advised that his objections to answering had been rejected and that he had been given another opportunity to answer (R. 361–363). Although agreeing that there was evidence to support a finding that petitioner had been so advised, they thought that it was not clear that the trial judge had applied proper standards. (3) The validity of the Committee was expressly considered and upheld by three

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[6] *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), pending before this Court on petition for certiorari, No. 66, O. T. 1953.

of the members of the court who voted to sustain the conviction (R. 354). The other three who voted to sustain the conviction necessarily agreed, although their concurring opinion does not discuss the point (*cf.* R. 361). Judge Fahy also concurred "with respect to * * * the validity of the subcommittee" (R. 361). It is not clear that Judge Bazelon's opinion reaches the issue (see R. 361–362).

SUMMARY OF ARGUMENT

I

A. Although petitioner contends that he claimed the privilege against self-incrimination in response to the questions in this case, the fact is that he made it clear to the Committee that his only basis for refusing to answer was his view that the Committee had no right to inquire into his political beliefs, affiliations, or associations. He did not, at any time during the extended colloquy in which he expounded his view, indicate by any form of words that he feared that an answer to any particular question would tend to criminate him; and, indeed, he specificially disavowed any such claim. The fact that petitioner made some statements which, in another context, might have been, at best, consistent with a claim of privilege, cannot be permitted to obscure the overriding fact that he never claimed or intended to claim the privilege.

In any event, the question whether petitioner claimed the privilege against self-incrimination

as the basis for refusing to answer the questions asked him is one of fact. That question has been resolved against him by the trial court which considered the evidence, and by the Court of Appeals which reviewed the case. Their conclusions are, we submit, amply supported by the evidence.

B. Inasmuch as petitioner did not claim the privilege before the Committee, he cannot claim it now. For the privilege against self-incrimination cannot be relied on unless it is specifically claimed, and a general objection to the question will not suffice. *United States* v. *Murdock,* 284 U. S. 141, 148. The fact is that the privilege, however deeply rooted, is an exception to the general obligation to testify, and therefore must be interpreted, with that obligation in mind. One who would claim the privilege must do so clearly.

II

A. Petitioner also contends that his conviction cannot be sustained because it was not made clear to him by the Committee that, despite his objections to the questions, he was being required to answer. The record of the hearings, however, amply justifies the conclusion reached by the Committee, the trial court, and the Court of Appeals, that petitioner refused to answer the questions—even though he knew that his objections had been rejected and that he was being required to answer.

The record shows, indeed, that he conceded that he was refusing to answer the questions.

B. Petitioner further contends that, even if the record would support this conclusion, his conviction should nonetheless be reversed because there was no finding in the District Court that he refused to answer. There was, however, a general finding of guilt. As there was no request for special findings (see F. R. Crim. P. Rule 23 (c)), this was sufficient if the supporting evidence was sufficient. Moreover, examination of the trial judge's opinion shows that he was, in fact, satisfied that there had been a refusal to testify. It shows also that there is no basis for accepting the conclusion of the dissent below that he did not reach this conclusion on a "correct view of the governing principles."

III

The petitioner's major contention is that the Resolution constituting the Committee on Un-American Activities is unconstitutionally vague. On this aspect of the case, the Government takes the position that only two questions are properly before the Court: (1) whether the questions which were asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and (2) if so, whether the Resolution as so construed is unconstitutional in that (a) it exceeds the investigatory

and legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment. In our view, the questions raised by petitioner which go beyond these are not properly before the Court.

A. The questions which were asked petitioner clearly come within the scope of the Committee's authority. The express purpose of the inquiry was to investigate into Communist infiltration into defense industries in connection with the recommendation of legislation on this subject. This inquiry comes within the language of the Resolution granting the Committee its authority. For that resolution authorized investigation into "the extent, character, and objects of un-American propaganda activities in the United States" and "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *." It is clear, at the very least, that this covers Communism and Communist propaganda. It is clear also that it covers such other Communist activities as are integrally related to such propaganda. Considerable evidence has long been available to Congress of the use by the Communist Party of propaganda not only to create a following for their views, but also to develop leads for espionage

and sabotage purposes. All of these activities are obviously propaganda activities, or, at the very least, a measure of the diffusion or the extent, character, and objects of such propaganda. Moreover, even if there were doubt as to this interpretation, it has been removed by Congressional approval of the Committee's continuance in spite of knowledge that the Committee had thus interpreted the Resolution.

The questions which petitioner refused to answer were within the scope of the inquiry. Since the subject matter of the inquiry related to legislation controlling the employment of Communists in war plants and the encouragement of those already working in such plants to join or support the Communist Party or its fronts, there would seem to be no doubt that questions whose purpose was obviously to develop information about the manner in which the Communist Party made its influence on UE effective, were pertinent.

B. As thus applied to the factual situation presented by this case, it is clear that the Resolution is constitutional.

1. We emphasize, at the outset, that the only constitutional questions which are properly before the Court are those which relate to the particular questions which petitioner was asked, and to that construction of the Resolution which authorizes those questions. Petitioner's attempt to have this Court decide questions not presented

by this record, relating to other aspects of the Resolution, other witnesses, other questions, and other proceedings, is misconceived.

This Court has repeatedly said that it will not pass on issues of legislative validity until they come before it inescapably, in concrete form, with the factual background and record appropriate for decision of the Concrete question. The Court neither renders advisory opinions nor declares general constitutional doctrines unrelated to the setting of a particular case. Cf. *United States* v. *Rumely,* 345 U. S. 41. The same principle has been stated with somewhat different emphasis when this Court has insisted that a complainant has standing to challenge the validity of legislative acts only as they affect him directly. He cannot insist on the rights of others, whether their cases be actual or hypothetical. Or, in still another fashion, even if the Resolution might be applied in an unconstitutional manner, such an application could be separated out, leaving the constitutional applications.

2. It is clear that the Committee had the power, consistent with the First and Fifth Amendments, to ask the questions here involved. Congress, and its committees, may investigate fully in relation to possible legislation. So far as the investigation relates to the investigation of Communist propaganda activities, there is no vagueness. So far as the questions asked relate to the network of leadership within a national union suspected

of being Communist dominated, the First Amendment does not present a limitation. An officer of a union accepting public responsibilities with respect to the affairs of the union cannot contend that all information with respect to the persons who are officers of the union is privileged as a "political association". Moreover, this Court's decisions make it clear, in any event, that Communist Party activities are not ordinary political associations, and may, in the interest of national security, be examined into.

C. The Resolution, on its face, is constitutional, even if one goes beyond the confines of this case.

1. The Resolution on its face is reasonably definite. In the first place, there would seem to be no requirement of definiteness between Congress and its committees, as custom and practice demonstrate. Indeed, in view of the fact that a major purpose and function of the assignment of Congressional business to committees is to create a ready source of intelligence with respect to legislative activity, and to relieve Congress of the burden of overlapping and numerous committee assignments, it is clear that it would impose an intolerable burden on Congress if this Court were to hold that standing committee resolutions must meet normal criteria of definiteness.

The argument that, nonetheless, the Resolution must meet criminal statute standards of definiteness, is based on the view that the Resolution and

the criminal statute (2 U. S. C. 192) must be read together as an integrated criminal law. This is not sound. A witness who appears before a Congressional committee can be advised as to the matter under inquiry so as to determine the pertinence of a question irrespective of the generality of the Resolution establishing the Committee. Here, for example, the purposes of this particular investigation were a matter of public record.

But even if there are requirements of definiteness with respect to the resolution itself, the test would have to be a broad one, not the test applicable to criminal statutes. Just as in the case of criminal prosecution for violation of administrative regulations, it is the regulation which is tested for specificity, not the general standard. Compare, *e. g., Boyce Motor Lines* v. *United States,* 342 U. S. 337.

The Resolution here is sufficiently definite, by either standard. While, considered in isolation, some of its words may not have precise meanings, there can be little question that they are calculated to authorize the Committee to seek information concerning propaganda activities of groups which seek by illegal means to undermine the government of the United States. Thus, whether the petitioner adverted to the announced purpose of the inquiry or to the Resolution itself, he could tell that the questions asked him

were pertinent and that there was a meaningful area of investigation open to the Committee.

2. The Resolution on its face as thus construed does not violate the First Amendment. We have shown that in so far as the Resolution applies to Communist activities it is clearly constitutional. We further submit that as the Resolution is reasonably to be interpreted it is designed to authorize at least an investigation into the same kinds of evils which Communist propaganda and propaganda activities engender and represent. In our view, "subversive" and "un-American" "propaganda" and "propaganda activities" clearly comprehend Communist propaganda activities. Accordingly, the Resolution does not violate the First Amendment.

The fact that the Resolution may authorize an investigation into both illegal advocacy and speech which Congress may not constitutionally proscribe does not render the Resolution unconstitutional. For surely Congress may authorize one of its committees to investigate as to where it should and may attempt to draw the line between the legal and the illegal. This is particularly clear in view of the fact that legislation has in fact been both proposed and enacted in the field covered by the Resolution.

Moreover, even if there are indirect effects of the Committee inquiry—sanctions of public opinion on those brought before the Committee—

there would not be any violation of the First Amendment. First Amendment rights are not absolute. They do not preclude compelling testimony, even though there are collateral consequences to the witness. The need for first hand information as a basis for governmental action outweighs the interference with personal rights resulting from compelled disclosures. Particularly is this so where the disclosure sought is of the *ad hoc* nature involved here, and where the Court has already sustained the importance of dealing with various aspects of the problem posed by subversive propaganda and related activities.

The premise of petitioner's argument is that the "right to silence" is protected by the First Amendment. But the First Amendment does not create any such right. Even if it is accepted that disclosures before the Committee result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable reaction to the expression of their views, the First Amendment is in no way violated.

D. The fact that one of the objects of the Committee may have been to expose and publicize subversive and un-American activity neither invalidates the Resolution nor the Committee's action in this case. In the first place, the existence of an intent to combat subversive activity by publicity does not mean that the inquiry is not also in aid of legislation. These purposes are not in-

consistent. This Court has rejected similar attacks upon Congressional committees. *McGrain* v. *Daugherty,* 273 U. S. 135; *Sinclair* v. *United States,* 279 U. S. 263. On this phase of the case, all that is necessary to sustain the Resolution and the Committee's action is the fact that at least one of the purposes of the inquiry was to assist in the recommendation or adoption of legislation.

Furthermore, the "informing function" of Congress, in itself, suffices to support the Committee's action, even if the sole purpose here were to expose subversive activity. It is clear, for example, that Congress, in the exercise of its regulatory power, may authorize an administrative agency to receive and publicize information. *Electric Bond & Share Co.* v. *Securities & Exchange Commission,* 303 U. S. 419. And this method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. We think it clear that the Constitution does not deny Congress the power to use its own investigative authority directly to accomplish the same end, nor to adopt a program of publicity and disclosure as a public safeguard against subversive propaganda which Congress does not wish to and perhaps cannot prohibit.

ARGUMENT

I

PETITIONER'S CONVICTION FOR REFUSING TO ANSWER QUESTIONS PUT TO HIM BY A SUBCOMMITTEE OF THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES DID NOT VIOLATE HIS PRIVILEGE AGAINST SELF-INCRIMINATION, BECAUSE PETITIONER DID NOT CLAIM THAT PRIVILEGE

A. PETITIONER SPECIFICALLY DISCLAIMED ANY RELIANCE ON THE PRIVILEGE AGAINST SELF-INCRIMINATION

Petitioner's first contention is that he claimed the privilege against self-incrimination in response to the questions in issue in this case; and that since the claim was proper, he cannot be convicted for refusal to answer. The verdict of guilty by the trial judge followed an explicit finding that petitioner did not claim the privilege, either in express terms, or in language which could, in its context, have reasonably been so understood; and, indeed, that petitioner specifically disavowed any such fear of incrimination (R. 225–227, quoted *supra*, p. 18). That finding, concurred in by the Court of Appeals (R. 356–357) is, we submit, amply supported by the evidence.

Petitioner did not at any point in his extended colloquy with the Committee indicate by any form of words that he feared that an answer to any

particular question would incriminate him. In fact, he specifically disavowed that his answers might tend to incriminate him, in the following language (R. 172)[7]:

> Mr. MOULDER. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?
>
> Mr. EMSPAK. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——
>
> Mr. MOULDER. Do you know them or not?
>
> Mr. EMSPAK. That does not concern this committee at all.
>
> Mr. MOULDER. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?
>
> Mr. EMSPAK. No; I don't think this committee has a right to pry into my associations. That is my own position.

On repeated occasions throughout his testimony petitioner made statements to the effect that the Committee had no right to pry into his associations, which seems clearly to have been his basis, at that time, for not answering the Committee's

[7] Whether this disclaimer of the privilege against self-incrimination be taken to apply to a single question, or be considered along with all the other statements of petitioner to relate to his failure to answer all sixty-eight questions (as we contend it should be), the final result is the same. Any one of the counts would suffice to support the judgment. *Sinclair* v. *United States*, 279 U. S. 263, 299.

questions (R. 168, 172, 178, 179). He consistently addressed his objection to the whole inquiry and the authority of the Committee, and not to any specific incriminating propensities of the particular questions asked (R. 172, 174, 178); many of his remarks were, in substance, simply a castigation of the Committee for its past and present activities (R. 169, 172, 192, 194). In short, although petitioner, an editor and official of long standing in the union, represented by counsel, made extensive remarks apparently patterned and preconceived for the occasion,[8] at no time during his questioning did he use the simple, familiar words which would have clearly and unambiguously conveyed to the Committee, and to the court, that he feared that his answer to a particular question would incriminate him. Indeed, he seems fairly carefully to have avoided the use of such language, although he makes, and has made, no claim that this verbal formula is or was unknown to him. In these circumstances, the trial court was amply justified in its conclusion that petitioner did not intend to claim the privilege.

Petitioner makes much of the fact that, at one stage of the proceeding while engaged in an extensive upbraiding of the Committee not directed at any particular question and in disregard of the

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[8] Very similar language was used by other witnesses in the same investigation. See *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), and *Bart* v. *United States*, 203 F. 2d 45 (C. A. D. C.), both pending on certiorari before this Court.

fact that he was being asked questions while talking, he said (R. 168):

> Because of my interest in what is going on these days, because of the activities of this committee * * * because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt these rights.

On its face, this declaration shows only an intention to "protect," not the witness, but constitutional rights in the abstract against committee encroachment. The trial court was amply justified in concluding, as it apparently did, that this was not intended as a claim of privilege as to any of the questions asked. Its context (see pp. 10–18, *supra*) indicates that it was part of a speech the petitioner was determined to make, and that it was directed at the general authority of the Committee to question him, rather than at the specific incriminating propensities of any particular question. The oblique reference to the Fifth Amendment could as easily refer to the right to due process of law as to the privilege—as six of the judges below suggested in the companion *Quinn* case (203 F. 2d at 23–24, 44). The privilege against self-incrimination is neither actually nor colloquially understood as a "supplement" to the First Amendment. Petitioner's general and passing reference to the Fifth Amendment clearly did

not suffice to put the subcommittee on notice that petitioner intended to assert his claim of privilege against self-incrimination as to all the questions.[9]

Petitioner also argues (Br. 171) that he claimed the privilege, in response to questions whether he knew certain officials, in the following words (R. 171):

> Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with references to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

Apparently, even petitioner did not think that this was a claim of privilege when he argued his motions for acquittal and a new trial in the District Court (see R. 225). In any event, the statement now relied upon was almost immediately thereafter followed by the Committee's query to petitioner, "Is it your feeling that to reveal your knowledge of them would subject

[9] Nor does it help petitioner's case (see Br. 170) to read this Fifth Amendment reference in conjunction with his earlier charge that the committee was trying to harass the union and its officers and members. Even if the charge were true, there would be no danger of incrimination to petitioner for that reason alone.

you to criminal prosecution?" to which he replied, "No. I don't think this committee has a right to pry into my associations. That is my own position" (R. 172).[10]

Petitioner argues in this connection (Br. 183–184) that, after he had made a claim of privilege, the Committee could not probe the reasons for the claim. Apparently petitioner concedes that his response to the Committee may embarrass his present argument, and thinks the case may be saved merely by disregarding a significant answer. However these arguments are resolved, it is clear that the Committee had a right to clarify for itself just what petitioner was saying when he made a statement that was at best a very equivocal claim of privilege. There is obviously a difference between trying to understand what petitioner was saying, and insisting, if he claimed the privilege, that he disclose the basis of his claim.

It is impossible to overemphasize the central fact on this phase of the case: That in a protracted colloquy between petitioner and the Committee, his major purpose was to refuse to give testimony with respect to what he called his political associations. This refusal was not based on any fear of possible criminal prosecution. It

[10] When later, petitioner kept insisting that he was making the same answer, not only as to his association with other individuals but as to his membership in the Communist Party, the only reasonable assumption is that he was not asserting a claim that his testimony would tend to incriminate him (R. 194–195).

was based solely on petitioner's view that his associations did not have to be disclosed to anyone, and certainly not to a committee which "stooped to interfere in the partisan affairs of a local union" (R. 168). This is not and should not be tortured into a claim of privilege against self-incrimination merely because of the chance use of language which, in a different context, might, at best, be consistent with a claim of privilege. In the last analysis, the question whether petitioner claimed his privilege against self-incrimination is the basis for refusing to answer the question asked him is one of fact. That question has been resolved against him both by the trial court which considered the evidence, and by the Court of Appeals which reviewed the case.

B. PETITIONER'S FAILURE TO CLAIM THE PRIVILEGE BEFORE THE COMMITTEE PRECLUDES HIS RELIANCE UPON IT NOW

It is clear that petitioner cannot rely on the privilege against self-incrimination now if he did not rely on it before the Committee. *United States* v. *Murdock,* 284 U. S. 141. There, the defendant was indicted for wilful failure to supply information at a hearing before an internal revenue agent, as the applicable statute required. At the hearing, he had specifically claimed possible incrimination under state law, but disclaimed federal incrimination. His later attempt to rely on his federal privilege was rejected by this Court, which stated (284 U. S. at 148):

> The validity of his justification depends, not upon claims that would have been warranted by the facts shown, but upon the claim that actually was made. The privilege of silence is solely for the benefit of the witness and is deemed waived unless invoked.

Essentially the same view is taken by Wigmore (8 Wigmore, *Evidence* (3d ed. 1940) § 2268):

> The privilege is merely an *option of refusal,* not a prohibition of inquiry. * * *
>
> Hence it follows that when an *ordinary witness* is on the stand, and a criminating fact, relevant to the issue, is desired to be proved through him, the question may be asked, and it is for him then to say whether he will exercise the option given him by the law. It cannot be known beforehand whether he will refuse. Besides, to prevent the question would be to convert the option into a prohibition.
>
> This principle would seem incapable of dispute.

Nor is it enough that a general objection was taken to the authority of the committee, or the materiality of a particular question asked. Cf. *United States* v. *Skinner,* 218 Fed. 870, 876 (S. D. N. Y.); *In re Knickerbocker Steamboat Co.,* 139 Fed. 716, 719 (S. D. N. Y.). See also *Vajtauer* v. *Commissioner,* 273 U. S. 103, 113.

These authorities show that the privilege must be claimed, and must be clearly enough claimed

so that there is no doubt that it was claimed. Such a rule is supported by the fundamental policy consideration that there is a primary obligation to testify which is "necessary to the effective functioning of courts and legislatures" (*United States* v. *Bryan*, 339 U. S. 323, 331; *Blair* v. *United States*, 250 U. S. 273, 281; *Blackmer* v. *United States*, 284 U. S. 421, 438). The privilege against self-incrimination, however deeply rooted, is an exception to that obligation (cf. Marshall, Ch. J., in *United States* v. *Burr* (*In re Willie*), 25 Fed. Cas. No. 14,692e, at p. 39) and must therefore be interpreted with that obligation in mind.

II

PETITIONER'S REFUSAL TO ANSWER THE QUESTIONS WAS WITH KNOWLEDGE THAT THE COMMITTEE WAS REQUIRING HIM TO ANSWER

A. PETITIONER "REFUSED" TO ANSWER

It is clear that, in the view of the majority of the court below, a witness before a Congressional committee who raises an objection to a question must in some manner be clearly apprised that his objection has been rejected and that he is being required to answer.[11] That is, it is not enough

[11] Six of the nine members of the court below specifically took this position in the companion case of *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), pending on certiorari, O. T. 1953, No. 66, which was decided simultaneously with the instant case; and in which there was a remand for retrial to determine, *inter alia*, whether the facts in that case showed

to sustain a contempt conviction that the witness, on some spurious basis, failed to answer a question. The committee may, if it chooses, accept a witness' objection, however unsound it may be, and turn to other subjects of inquiry. In such circumstances, of course, it would be unfair to contend later that the witness has been in contempt of the committee. The problem in the present case arises because petitioner disputes the Government's contention that it was made clear to him that his objections were rejected and that he was being required to answer.

It is not clear that petitioner seriously presses the contention that this must be done by the rigid formula of a specific direction to answer, followed by a rigid refusal. If he does, it is clear that the contention is not sound.

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that the witness was clearly apprised of his obligation to answer.

Three of those six judges concurred in the present case, and took the view that the "record contains sufficient evidence to support a finding that [petitioner] deliberately and intentionally refused to answer and thus to support the judgment" (R. 361). The other three of the *Quinn* majority, however, dissented here, stating that as in *Quinn*, it was not clear that the trial judge's finding of guilt was based on a finding that the witness understood that he was being required to answer (R. 361–362). The three remaining judges, Clark, Proctor, and Miller, in the majority in the present case, but dissenting in *Quinn*, apparently thought that the only issue was whether the witness failed to answer the question and whether, in fact, there was a sufficient legal basis for this refusal. See R. 355–356. Cf. *United States ex rel. Cunningham* v. *Mathues*, 50 F. 2d 411 (C. A. 3).

A Congressional investigation is an important legislative function; it is not a game of wits between committees and witnesses. The measure of witnesses' rights before committees is whether the substance of the important protections to which they are entitled has been accorded, not whether some mechanical verbal formula has been used. Certainly this is so where, as here, there is no evidence that, with respect to the particular witness, the committee attempted in any way to abuse its powers. It would seem clear that so long as the witness understands that his objections are rejected and that he is being required to answer, the particular form of words used to apprise him of this fact is unimportant.

To be sure, where Congress has itself imprisoned witnesses for contempt, it has given the witnesses an opportunity to purge themselves before imposition of imprisonment. Judge Bazelon, in concurring in the *Quinn* case below, argues that 2 U. S. C. 192 requires a similar construction because a contempt proceeding which was pending in 1857 at the time of its enactment followed this practice. Petitioner adopts this argument (Br. 188).

The practice in direct Congressional contempt proceedings, however, is not relevant. The justification for such proceedings is to remove an interference with the legislative process. Hence, Congress cannot imprison for the purpose of punishment nor can it imprison for any period

beyond its own term of life. See *Marshall* v. *Gordon*, 243 U. S. 521, 542–545; Potts, *Power of Legislative Bodies to Punish for Contempt* (Part II), 74 U. Pa. L. Rev. 780, 783. Devices to help insure that an answer from the recalcitrant witness will be forthcoming therefore are reasonable and necessary. But the offense described in 2 U. S. C. 192 is to *punish* the act of interfering with the business of Congress. The harm, obviously, is done as soon as the witness knows that his objections are rejected and that he is being required to answer, but still does not do so. The contempt statute was enacted specifically to permit punishment for this harm beyond the term of the particular Congress interfered with, to a time when it was clear that the witness' desire to comply with the demand made earlier would serve him no stead. See 34th Cong., 3d Sess., Globe, p. 406; Eberling, *Congressional Investigations* (1928), pp. 302–307. There is no evidence that the offense would be less because the offender repented, although, as with all offenses, this might be relevant in imposing the sentence.

We submit, in short, that there is no basis for insisting on the rigid formulation of a specific direction to answer followed by another refusal. Therefore, the only question on this phase of the case is whether the evidence is sufficient to justify the conclusion that petitioner's refusals to answer were in the face of his knowledge that his objections thereto had been rejected. We suggest,

however, that whether the more or the less severe test is used is really irrelevant in this case because the record amply meets either standard.

The most cursory examination of the record of petitioner's appearance before the Committee shows, beyond any doubt, that he clearly understood that the Committee regarded his so-called answers as being refusals to answer, and that he was expected to answer the questions despite his repeated objections as to the Committee's lack of authority to ask them. For example, the very first of the questions involved in the present indictment ("Are you acquainted with Joseph Persily?") was repeated six times (R. 167–170), only to be met with refusals which petitioner acknowledged were refusals. In the course of this extended colloquy, petitioner made what were apparently prepared charges against the Committee, although the chairman, Congressman Moulder, indicated as petitioner was making these charges, that he was not answering the question. Finally, when petitioner appeared to have ended his statement, Congressman Moulder, in what was unquestionably a plain rejection of the claimed basis for refusing to answer, then stated (R. 169)—

> * * * And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

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Mr. TAVENNER. Are you acquainted with a Joseph Persily?

Mr. EMSPAK. For the reasons I stated before, I answered it.

Mr. MOULDER. Then you refuse to answer the question?

Mr. EMSPAK. No. I answered it.

Mr. TAVENNER. Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER. *The record will reveal that you have not answered the question.*

Mr. EMSPAK. I have answered it to the best of my ability under the circumstances. [Italics added.]

* * * * *

Nor is there any doubt that the Committee's attitude was consistent on this point. For later, the following colloquy occurred (R. 194):

Mr. TAVENNER. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York City?

Mr. EMSPAK. I answered that.

Mr. MOULDER. You mean you refuse to answer for the same reasons you gave at the beginning?

Mr. EMSPAK. That is correct. I answered the best way I know how.[12]

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[12] See also colloquy at R. 174, referred to *supra*, pp. 16–17.

These colloquies show, beyond argument, that the Committee made it clear to petitioner that the basis for his claim was rejected, and that his "answers" were understood by all concerned as being refusals to answer. They also show that, even if the Court accepts the more severe standard suggested by Judge Bazelon, namely, that there is no "refusal" until the witness is specifically advised that his answers are unsatisfactory and is specifically directed to answer the questions, petitioner's conviction here still must stand. For, over and over again, during his testimony, petitioner was apprised that the Committee thought he had not answered, both by the chairman and by the committee counsel, and that he was thereafter expected to give answers and not reasons for not answering. Even the dissenting judges below agreed that "the record reveals matters which might be said to reflect an adverse ruling by the Committee on the appellant's objections" (R. 362).

B. IT WAS PROPERLY FOUND THAT PETITIONER REFUSED TO ANSWER

Petitioner urges, however, that even if the evidence might sustain the view that he "refused" to answer the Committee's questions, still his conviction must be reversed and the case remanded, because there was no express finding on this point by the trial court (Br. 191–193).

Since this case was tried by the district court without a jury, there were, of course, no instructions to the jury. Nor was the district judge required to make special findings; a simple verdict of guilt would have sufficed. See F. R. Crim. P., Rule 23 (c). Petitioner did not request the court to make any express or specific finding as to whether petitioner's responses to the questions asked him constituted a "refusal". The issue of fact principally contested in the district court, and to which its opinion is principally devoted, was whether petitioner's refusal to answer the questions was based on a claim of privilege against self-incrimination.

In any event, we believe it clear that the district court's conclusion that petitioner was guilty of violating the statute rested upon a finding that he refused to answer the committee's questions. Thus, the trial judge pointed out that "It is reasonable to conclude that the [petitioner] fully intended his examination should proceed and terminate as it actually did" (R. 224), and that ["Petitioner] lost no time in disputing the powers, the right and authority of the committee to inquire into his beliefs, his associations, or as he stated it, anything else" (R. 225). The trial judge, further, endorsed the Committee chairman's view that petitioner's conduct "disclosed a flagrant attitude toward the Committee" (R. 226). Finally, in ruling that petitioner had

not claimed the privilege against incrimination, the trial judge stated his view that petitioner's response had been that of one "who has something to hide, or who wishes to protect others, or through pique refuses to furnish information in disregard of his duty, in defiance of a Congressional Committee, as a challenge to its powers and authority, or for distrust of its aims, its motives and its good faith" (R. 227). It is clear from the whole of his opinion that he thought that petitioner's conduct reflected all of these alternatives.

We submit that, in view of this opinion, it is plainly unsound to argue that it was not found that petitioner understood that he had a duty to answer; and that, in spite of that fact, and in spite of further opportunity to answer, he refused to do so. It would elevate form above substance to remand this case now merely because the trial judge did not state this finding in so many words, particularly when no issue had been made of the point. Cf. *Alger* v. *United States,* 171 F. 2d 667 (C. A. 7). Moreover, such a finding is implicit in the general verdict of guilty; the district court stated in its opinion that the petitioner's refusal to answer was both flagrant and premeditated. It follows, therefore, that if this finding is supported by the evidence, as it surely is, there is no basis for disturbing the conviction. *Blunden* v. *United States,* 169 F. 2d 991

(C. A. 6); *Seefeldt* v. *United States*, 183 F. 2d 713 (C. A. 10).[18]

It is clear that the substance of the colloquy between the petitioner and the committee was a direction to petitioner to answer, which he refused to obey. As we have pointed out above, it is apparent that petitioner had decided to put to the test the validity of his grounds for not answering. This meant that he had to refuse to answer on the basis which he wanted to have tested. He did this, and the district court recognized that he did so. We submit that he ought not now be permitted to avoid that test on the ground either that he did not understand that he was being required to answer and refused to do so, or that the district court did not make a proper finding as to his understanding.

III

THE COMMITTEE ON UN-AMERICAN ACTIVITIES WAS EMPOWERED TO REQUIRE PETITIONER TO ANSWER THE QUESTIONS INVOLVED HERE

Petitioner has devoted a major portion of his brief to an attack upon the Resolution authoriz-

[18] Moreover, the issue whether petitioner's refusal was wilful could only be determined from an assessment of the printed record; and, therefore, although it would have been proper, as a matter of discretion, for the court below to remand the case to the district court, there was no requirement that it do so. Cf. *Quinn* v. *United States*, 203 F. 2d 20, 24–25 (C. A. D. C.), pending on certiorari before this Court, No. 66; *Bowles* v. *Carnegie-Illinois Steel Corporation*, 149 F. 2d 545, 546 (C. A. 7); *British America Assur. Co. of Toronto, Canada* v. *Bowen*, 134 F. 2d 256, 260 (C. A. 10).

ing the Committee's investigation, and upon Committee procedures generally, without regard to the specific questions which were asked him or to the particular inquiry out of which his citation for contempt arose. Petitioner thus seeks to have this Court decide broad and basic Constitutional questions relating to the power of Congressional committees to investigate and elicit testimony in aid of their investigations, as well as to the application of the First Amendment to this Congressional power.[14]

We should first like to point out that the power of the House Committee on Un-American Activities to investigate, under the Resolution here involved, has been challenged before and the validity of that Resolution has been consistently upheld. *United States* v. *Josephson,* 165 F. 2d 82 (C. A. 2), certiorari denied, 333 U. S. 838; *Barsky* v. *United States,* 167 F. 2d 241 (C. A. D. C.), certiorari denied, 334 U. S. 843; *Eisler* v. *United States,* 170 F. 2d 273 (C. A. D. C.), certiorari granted, 335 U. S. 857, removed from

[14] Petitioner did not attack the validity of his conviction on these grounds in the Court of Appeals, although he did present in his petition for a writ of certiorari the questions, "Whether House Resolution 5, as construed and applied herein, abridged the petitioner's freedom of speech, press and assembly in violation of the First Amendment to the Constitution" and "Whether the First Amendment protects a witness before a Congressional committee against the compulsory disclosure of the identity of trade union officials with whom he is associated and of his political views and affiliations" (Pet. 10, see also Pet. 38–40).

docket, 338 U. S. 189, certiorari dismissed, 338 U. S. 983; *Marshall* v. *United States,* 176 F. 2d 473 (C. A. D. C.), certiorari denied, 339 U. S. 933; *Lawson* v. *United States,* 176 F. 2d 49 (C. A. D. C.), certiorari denied, 339 U. S. 934; *Kamp* v. *United States,* 176 F. 2d 618 (C. A. D. C.), certiorari denied, 339 U. S. 957; *Dennis* v. *United States,* 171 F. 2d 986 (C. A. D. C.), affirmed, 339 U. S. 162; *Morford* v. *United States,* 176 F. 2d 54 (C. A. D. C.), reversed on another point, 339 U. S. 258.

On this aspect of the case, the Government takes the position that only two questions are properly before this Court: (1) whether the questions which were asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and (2) if so, whether that Resolution, as so construed, is unconstitutional, in that (a) it exceeds the investigatory and legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment. In our view, petitioner's attack upon Committee activities with respect to other parties and to other questions which are not before this Court at this time raises issues which on this record are abstract and hypothetical. As we shall show, it is well settled that the validity of the Resolution only insofar as it authorized the questions asked petitioner is properly before the

Court, and that petitioner has no standing to challenge the propriety of questions asked other witnesses at other times (*infra,* pp. 66–71). We shall further show that, in any event, the Resolution, on its face, is Constitutional and does not violate the First or Fifth Amendments (*infra,* pp. 77–110).

A. THE QUESTIONS WHICH WERE ASKED PETITIONER CAME WITHIN THE SCOPE OF THE COMMITTEE'S AUTHORITY

Preliminarily, we believe it important to emphasize the nature of the particular questions which petitioner was asked and which he refused to answer. Specifically, petitioner's conviction rests on his refusal to answer 68 questions put to him by the House Committee on Un-American Activities after he had been subpoenaed by that committee and sworn as a witness. Fifty-eight of these questions asked, in substance, that he state whether or not he knew certain named individuals and could disclose whether or not those individuals presently held or had held certain positions in UE (R. 5–12), a union in which he was a national officer. Eight of the questions related to petitioner's possible membership in the Communist party, and to various evidences of that membership (R. 12–13); and the other two dealt with his "affiliation" with the National Federation for Constitutional Liberties and his "association" with the Civil Rights Congress (R. 12).

1. *The express purpose of the inquiry was to investigate into Communist infiltration into defense industries in connection with a recommendation of legislation on this subject*

The authority of the Committee to place under inquiry the particular matters here involved, and to subpoena witnesses in pursuance of the inquiry, derives from the House Resolution constituting the Committee on Un-American Activities, which provides, in relevant part, as follows:

> The Committee * * * is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The purpose of the specific hearing at which petitioner was asked the particular questions here involved was stated by Committee counsel, at the very outset of such inquiry, as follows:

> Mr. TAVENNER [Committee counsel]. Mr. Chairman, the purpose of this hearing is to inquire into the question of Communist affiliation or association of certain

members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense.

The advisability of recommending legislation providing for security standards, and the advisability of tightening present security requirements in industrial plants working on certain Government contracts, was considered by the committee in both its open and executive session on June 6, 1949, as a result of the testimony of Leona and Joseph Franey and Loren G. Haas.

It will be remembered that Mr. Wood, the chairman of this committee, offered H. R. 3903, section 2 of which would make it an offense for any individual employed in connection with the performance of any national defense contract "(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General; (2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or (3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1)

> or (2) of this section." This bill was referred to this committee.
>
> It is the further purpose of this hearing to develop facts for the committee's consideration in connection with this resolution.[15]

The question under Committee inquiry was thus, in short, the advisability of passing certain legislation to deal with the concrete danger that Communists, and those who could be used for their purposes, might be gaining a foothold in national defense plants through Communist control of unions. Such a foothold might well be used both for propaganda and direct espionage or sabotage purposes. H. R. 3903, which deals with this problem and which was expressly cited by Committee counsel, had been referred to the Committee on March 30, 1949 (95 Cong. Rec. 3546), prior to the beginning of these hearings, and prior also to the Franey testimony of June 6, referred to in the statement of Committee counsel. It thus appears clear that at least one of the purposes, if not the primary purpose, of the inquiry here was to obtain information with respect to the recommendation of specific legislation referred to the committee.

2. *This inquiry came within the language of the Resolution granting the Committee its authority*

Clause (i) of the Committee Resolution authorizes investigation into "the extent, character,

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[15] See n. 3, pp. 7–8, *supra*.

and objects of un-American propaganda activities in the United States." Clause (ii) authorizes investigation into "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *."

We shall show (*infra,* pp. 77–90) that in context the language of these clauses has a definite content, and that petitioner's attack upon the alleged ambiguity of the words "un-American" and "subversive", as a basis for defining the scope of the investigatory authority of a committee of Congress, is without foundation. However, we do not believe that it is necessary in this case to define the outermost limits of these terms. For, if anything was clear in 1949, or is clear today, it is that these words aptly describe and unquestionably include Communist activities designed to subvert our form of government. Accordingly, for the purposes of this case, inasmuch as the Committee's inquiry at issue here was into the extent of Communist infiltration into defense plants, there is no doubt that the inquiry was authorized by the Resolution.

As the Court of Appeals for the Second Circuit has said (*United States* v. *Josephson,* 165 F. 2d 82, 88, certiorari denied, 333 U. S. 838):

> At the very least the language of the authorizing statue permits investigating the advocacy of the idea that the Government

> or the Constitutional system of the United States should be overthrown by force, rather than modified by the peaceful process of amendment of the Constitution set forth in Article V.

See also *Barsky* v. *United States,* 167 F. 2d 241 (C. A. D. C.), certiorari denied, 334 U. S. 843. And this Court has itself reviewed too recently the role of the Communist Party and its advocacy of the overthrow of this Government by force and violence to require rebuttal of any contrary argument here. See *Carlson* v. *Landon,* 342 U. S. 524; *Harisiades* v. *Shaughnessy,* 342 U. S. 580; *Adler* v. *Board of Education,* 342 U. S. 485. *American Communications Association* v. *Douds,* 339 U. S. 382; *Dennis* v. *United States,* 341 U. S. 494. We cannot conceive that anyone would doubt that the advocacy of the overthrow of this Government by unconstitutional means is encompassed by the terms "un-American" and "subversive." Certainly, no one could reasonably suggest that a Resolution which authorizes a Congressional committee to investigate "un-American" and "subversive" activities does not authorize the committee to investigate into the extent of Communist infiltration in defense plants. Indeed, the Internal Security Act of 1950, 64 Stat. 987, 50 U. S. C. (Supp. V) 781, contains, in its provisions for "Subversive Activities Control", a finding by Congress that—

* * * * *

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) the Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

In sum, we think it too clear for extended discussion that, in so far as the words "un-American" and "subversive" are concerned, they clearly embrace Communist activity, the subject of the inquiry here.

In like manner, the authority of the Committee to investigate under clause (i) the "extent, character, and objects of * * * propaganda activities", or, under clause (ii), the "diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * *," covers activities such as attempts by Communists to gain a foothold in national defense plants through the device of infiltration into a labor union. The fact is that Communists operate through propaganda and advocacy. To

investigate "propaganda" and "propaganda activities" requires that an inquiry be made into the nature of the contents generally, and into the identity of those who disseminate the propaganda.[16] As is shown below (*infra*, pp. 63–65), there is considerable evidence, with which Congress is familiar, that Communists have used their positions in unions for propaganda purposes, through control of union newspapers and in handling grievance procedures and strikes. There is, also, evidence that the business of making propaganda has been combined with open and covert solicitation for Party membership and for developing possible espionage and sabotage. These activities are so closely related to propaganda that they must be regarded as clearly within the meaning of "propaganda activities." And this is, of course, the practical construction which the Committee itself has placed upon the terms of its Resolution, as petitioner's brief abundantly demonstrates.

But even if the kinds of activity being investigated in this case are not "propaganda activities" *per se,* they certainly are an aspect of the "extent, character, and objects" of such activities, which

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[16] If a distinction is to be drawn between the "propaganda", covered in clause (ii) of the Resolution, and the "propaganda activities" of clause (i), then, necessarily, propaganda activities must refer to those things which experience has shown are the devices, mechanism, and institutions used by propagandists (particularly Communist propagandists) to accomplish and make more effective the purposes of their propaganda.

under this Resolution, are a proper subject of inquiry. For it is clear that these words were intended to permit comprehensive inquiry into the success of the propaganda activities described. "Extent" calls, at least, for a measure of the volume of such activities. "Character" calls, at least, for a measure of the relative inflammatory nature of such activities, how much persuasion, how much violence, how much political strife, how much propaganda in the narrow sense. And "objects" calls for a study of the basic purposes sought to be accomplished, which very well might include the use of people recruited through dissemination of propaganda who could be induced to collect secret industrial data and make themselves available for sabotage.

In short, in order to investigate Communist propaganda, it would seem impossible not also to investigate the means by which the disseminators of the propaganda have obtained their positions of power, the extent to which these positions have been used for propaganda purposes, the relationship between propaganda and other activities, and the extent to which Communists achieve their goals by the use of propaganda. Indeed, the specific questions asked petitioner at the instant hearing demonstrate the relevance and importance of such information. *Infra*, pp. 61–66.

Moreover, this view of the authority of the Committee derives further support from clause (iii)

of the Resolution, which authorizes the investigation of "all other questions in relation" to the questions covered by the first two clauses "that would aid Congress in any necessary remedial legislation." This obviously leaves discretion to the Committee to probe aspects of propaganda problems, which, though not directly propaganda, have a great deal to do with the effectiveness of particular propaganda in accomplishing its purposes.

It is certainly clear that Congress, with knowledge that the Committee has construed the words of the Resolution in this way, has permitted the Committee to continue to exist under precisely the same charter. For example, Congress had knowledge that the Committee had, in 1947, conducted an investigation into the extent, character, objects, and methods of Communist infiltration into unions, and had obtained information about political strikes and possible espionage. (See *infra,* pp. 63–66). Congress had knowledge, also, that the Committee during the same session of Congress had conducted an intensive investigation of Communist espionage in the United States Government and into Communism in the motion picture industry, and had subpoenaed witnesses for those purposes (Hearings, Committee on Un-American Activities, 80th Congress).[17] In the

[17] For a summary review of the matters taken up by the Committee during each Congress since 1945, see Carr, *The House Committee on Un-American Activities*, 1945–1950.

face of this knowledge, the charter of the Committee was nonetheless renewed in 1949 at the opening of the 81st Congress (during which petitioner was called).

The question here is basically one of determining whether this inquiry represented a valid exercise by the Committee of the authority given it by Congress. Consistent Congressional reenactment of a charter to what is certainly a well-known—to Congress as well as to the general public—committee forecloses any argument, as applied to this case, that the Committee erroneously interpreted the will of Congress in construing the Resolution to mean that it could investigate the possibility and techniques of Communist domination of a union important in national defense plants. Compare *United States* v. *Rumely,* 345 U. S. 41, 47–48. To accept such an argument would, we submit, clearly disregard every indication that Congress has given that the House Committee on Un-American Activities has been authorized by it to investigate the nature and scope of Communist propaganda activities, in the broad sense, designed to subvert the present form of government of the United States.

3. *The questions which petitioner refused to answer were within the scope of the inquiry*

Since at least one of the subjects of the inquiry was the advisability of certain legislation,

and since the Committee was authorized to submit that subject matter to inquiry, there can be no serious argument that the questions which petitioner refused to answer were not "pertinent to the question under inquiry."

The proposed legislation (H. R. 3903) related to work in defense plants by members of the Communist Party and of its organized supporters, and attempts by others, presumably including union officials, to encourage defense plant workers to support the Party or its "fronts". The further legislation, which the Committee's own experience had suggested, related to tightening security requirements in defense plants, with special reference to access to such plants by union officials who had not been subjected to the safeguards imposed on regular employees. It is plain that these two suggestions were related, and that any thorough investigation of the legislation introduced in the House would canvass the need for the latter provisions. Both, in fact, were recommended by the Committee in its annual report (*Annual Report of the Committee on Un-American Activities for the year 1949,* pp. 23–24), and, with modifications, H. R. 3903 found a place in the Internal Security Act of 1950, 64 Stat. 987, 992, Sec. 5, 50 U. S. C. (Supp. V) 784.

With this as the matter under inquiry, it appears that petitioner was asked a series of questions related to the organization and structure of

UE, all of which he answered. Following this, he was asked the questions now at issue. As we have indicated (*supra*, p. 51) most of these were whether he knew certain named individuals who were thought to be district organizers or international representatives of UE. The remaining questions dealt with petitioner's possible membership in the Communist Party and his possible association with two groups alleged to be Communist front groups.[18]

If the Committee were to determine the need for the proposed legislation, it was obviously pertinent to know if a union like UE, which had a sizeable membership in defense plants, was Communist dominated. It was pertinent to know also how the Communist domination made itself effective: whether only through the propaganda line in the UE News or by oral advocacy, or whether this was in conjunction with the selection of district organizers and international representatives, who served as liaison between the national headquarters and locals, and who were in a position thereby (a) to help formulate the thought of union members on issues as to which the union took a position, and (b) to adjust labor disputes and grievance policy to the sometimes delicate de-

[18] After the colloquy on these questions, the Committee went on to ask petitioner about his work as editor of the UE News, and the circumstances accounting for its consistent adherence to the Communist Party line. These questions petitioner answered.

mands of the Party line and the possible demands by the Soviet Union for information about American industry.

Indeed, the Committee's own earlier investigations indicated the need for careful inquiry into this area before reaching conclusions on the suggested legislation. In 1947 hearings conducted by the Committee, several witnesses had given testimony about UE. Among other things, it was testified that the national board of UE had unsuccessfully attempted to revoke the charter of one of its locals immediately after the local board had waged a successful fight against a Communist faction among its own membership. *Hearings Regarding Communism in Labor Unions,* I House Committee on Un-American Activities, 80th Cong., p. 149. There was testimony that there had been open solicitation of Communist Party memberships by UE officials (*id.,* p. 161); that certain of the international organizers of the union were Communists (*id.,* p. 171); that there had been contributions made in the name of the union to Communist "front" organizations and simultaneous refusal to support non-"front" groups (*id.,* pp. 159, 180, 181); and that resolutions following the Communist Party line had been adopted in the name of the union as a result of the efforts of Communists in the union (*id.,* pp. 159-160, 180, 185). It was pointed out that Communist effectiveness even in the local had been quite out of

proportion to the number of Communists in the union (*id.*, pp. 164, 165, 167). It was pointed out also that the local union newspaper followed the Party line (*id.*, p. 174), and that there was a remarkable similarity of approach as between several of the papers put out by unions reputed to be Communist-dominated (*id.*, p. 168). It was stated that the ultimate Party interest was in swaying political thought (*id.*, p. 184), which often increased the difficulties of orderly settlement of grievances (*id.*, pp. 162–163). And there were predictions by two witnesses, with long experience in the union, that there would be dangers of sabotage and political strikes in the event of armed conflict between the United States and the Soviet Union (*id.*, p. 17, 185–186).[19]

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[19] Similar testimony was developed before the Committee with respect to Local 248 of the United Automobile Workers in connection with inquiries into the 1946 strike at the plant of the Allis-Chalmers Company, at Milwaukee. See Hearings Regarding Communism in Labor Unions, *supra*, pp. 1–60. At pages 6–7 of those Hearings, an unfavorable complaint of one of Allis-Chalmers' employees is reported, and gives some idea of Party technique:

"What is the idea, I call Owen Lambert in on a grievance, expecting to get a raise, or the right price on this job I am working on, and he talks to me hour on hour about joining the American Youth for Democracy, or he wants to sell me a subscription to the New Masses or to In Fact, or the Daily Worker, and he gives me booklets to read, and we never get around to the handling of my grievance." In Carr, *The House Committee on Un-American Activities, 1945–1950* (1952), pp. 47–49, a summary analysis is made of these hearings on Communism in labor unions.

It would seem impossible even to argue about the pertinence of fuller and additional data of this nature, particularly when it was sought from a witness, like petitioner, who concededly occupied an important position in the Union.[20]

To summarize, it is clear that the questions which were asked petitioner came within the scope of the Committee's authority because it is clear that an investigation into Communist infiltration into defense plants is within the scope of the Resolution, and that the particular questions asked were pertinent to this limited investigation.

B. THE RESOLUTION, AS APPLIED HERE, IS CONSTITUTIONAL

1. *The only constitutional questions properly before the Court are those arising out of the particular questions which petitioner refused to answer*

We emphasize that the only constitutional questions which are properly before this Court are those which relate to the particular questions which petitioner was asked, *i. e.*, whether the grant of authority to the Committee to ask those questions violates the Constitution. Petitioner's attempt to have this Court decide questions, not presented by this record, relating to other aspects of the Resolution, other witnesses, other questions,

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[20] Moreover, the testimony at the trial showed this pertinence (R. 157–158). Cf. *Bowers* v. *United States*, 202 F. 2d 447 (C. A. D. C.)

and other proceedings is misconceived. This is not an appropriate case for deciding generally the validity of all aspects of the resolution authorizing investigation by the House Committee on Un-American Activities or for passing upon everything the Committee may have done in the past. See *United States* v. *Rumely,* 345 U. S. 41; *Barsky* v. *United States,* 167 F. 2d 241, 248, certiorari denied, 334 U. S. 843.

This Court has repeatedly said that it will not pass on issues of legislative validity until they come before it inescapably, in concrete form, with the factual background and record appropriate for decision of the concrete question; this Court neither renders advisory opinions on hypothetical cases nor declares general constitutional doctrines unrelated to the particular case.[21] Thus, in *United Public Workers* v. *Mitchell,* 330 U. S. 75, where the Court refused to entertain a complaint, at the instance of persons who had not violated the Act, that the Hatch Act violated rights under the First Amendment and was un-

[21] See *Federation of Labor* v. *McAdory,* 325 U. S. 450, 461–2; *United Public Workers of America* v. *Mitchell,* 330 U. S. 75; *Rescue Army* v. *Municipal Court,* 331 U. S. 549, 568 ff. and earlier cases there collected; *United States* v. *Petrillo,* 332 U. S. 1, 5; *Toomer* v. *Witsell,* 334 U. S. 385, 394; *Parker* v. *Los Angeles County,* 338 U. S. 327, 333; *District of Columbia* v. *Little,* 339 U. S. 1, 3–4; *Sweatt* v. *Painter,* 339 U. S. 629, 631; *Touhy* v. *Ragen,* 340 U. S. 462, 469; *United States* v. *Hayman,* 342 U. S. 205, 223; *United States* v. *Rumely,* 345 U. S. 41, 48.

constitutionally vague under the Fifth Amendment, the Court stated (330 U. S. 89–90):

> The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interference upon the other.

By this standard. it is plain that the broad issues tendered by petitioner here should not be decided in this case. The challenged Resolution was quite clear enough for petitioner to understand that he was under a duty to testify as to the questions put to him. For this Court, in these circumstances, to undertake to decide whether, without respect to its clearly operable area, the Resolution is too vague in other situations would be to decide a hypothetical case not now before the Court.

Moreover, in applying essentially the same principle but with somewhat different emphasis, the Court has insisted that a complainant has standing to challenge the validity of legislative acts only as those acts affect him directly. He cannot insist on the rights of others, whether their cases be actual or hypothetical. *United States* v. *Wurzbach*, 280 U. S. 396, 399; *Robinson* v. *United States*, 324 U. S. 282, 286; *Kuehner* v. *Irving Trust Co.*, 299 U. S. 445, 455. For instance, in Chief Justice Vinson's opinion in *Dennis* v. *United States*, 341 U. S. 494, 515–516, it was pointed out that the defendants, convicted for conspiracy to teach and advocate the violent overthrow of the Government, could not complain of possible difficulties in the application of the statute to other persons and in other circumstances. So here, we do not believe that petitioner, to whom the Committee Resolution is clearly applicable, should be permitted to attack all possible applications of the Resolution. The fact that there may have been broader applications of this Committee's investigatory power in the past, or that there may be in the future, does not change the principle, and allow petitioner to raise objections which might have arisen had he been asked different questions.

That these standards of judicial restraint are applicable to Congressional resolutions of the kind here involved was clearly settled by this

Court's opinion in *United States* v. *Rumely*, 345 U. S. 41, where this Court said (345 U. S. at 456):

> Patently, the Court's duty to avoid a constitutional issue, if possible, applies not merely to legislation technically speaking but also to congressional action by way of resolution. See *Federal Trade Comm'n* v. *American Tobacco Co.*, 264 U. S. 298. Indeed, this duty of not needlessly projecting delicate issues for judicial pronouncement is even more applicable to resolutions than to formal legislation. It can hardly be gainsaid that resolutions secure passage more casually and less responsibility, in the main, than do enactments requiring presidential approval.

To go beyond the boundaries of this case to consider, unnecessarily, possibly difficult constitutional questions of the validity of an authorization of the Congress, on behalf of a witness not really hurt by alleged improprieties in the resolution or of the committee, would itself, we respectfully submit, be in direct conflict with the governing principles of constitutional adjudication established and consistently adhered to by this Court. The only constitutional question here presented is whether the Resolution, interpreted so as to authorize the inquiry and questions, violates the Constitution.

Another way of reaching this result is via the doctrine of separability. For any possibly invalid application of the Resolution can be sepa-

rated from those which are valid, without invalidating the Constitutional scope of inquiry. A statute may, of course, be invalid as applied to one set of facts and valid as applied to another. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne,* 224 U. S. 354; *Kansas City Southern Ry. Co.* v. *Anderson,* 233 U. S. 325; *Poindexter* v. *Greenhow,* 114 U. S. 270, 295; *Federation of Labor* v. *McAdory,* 325 U. S. 450, 462. There would seem to be no reason why the same is not true with respect to a resolution. For the principle of separability, which permits the valid part of a legislative act to be saved where it appears that the enacting body would have authorized the valid matter even if the invalid were eliminated, is not dependent on any difference between a statute and a resolution.

2. *The Committee had the power, under the Constitution, to ask the questions here involved, and, in so doing, did not violate either the First or Fifth Amendment*

(a) We submit that under our view of the Resolution no serious constitutional question as to its validity is presented. The power of the Committee to inform itself, in order the more intelligently to recommend legislation or to approve legislation which has been referred to it, appears to us to be beyond constitutional attack. It is an essential function of Congress to inform itself upon all matters of national concern.

McGrain v. *Daugherty,* 273 U. S. 135, 171–175; *United States* v. *Norris,* 300 U. S. 564, 573. The cases establish, and it cannot be denied, that a Congressional committee may seek facts by compulsion, when necessary, in aid of the power of Congress to legislate. This means that Congress may seek to elicit all the facts bearing on a subject within its constitutional authority. It is not limited to inquiring into those facts which show the need for legislation or into those matters which it has power to prohibit. The power to investigate is necessarily broader than the substantive power which may be exerted by the investigator. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U. S. 186; *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501. It is equally important for Congress to be informed as to facts which would show legislation to be undesirable and unnecessary. Congress obviously cannot tell whether there is need or Constitutional basis for regulating the statements of which, for example, "propaganda" may consist until it learns what those statements are, and what the object and effects of such "propaganda" may be.

Here, where the Committee was seeking information in relation to propaganda and propaganda activities, which at the least encompassed the advocacy of the overthrow of the Government by force and violence, we submit that there can be no dispute as to the authority of Congress or

the Committee to elicit testimony in connection with that inquiry, both voluntarily and compulsorily.

(b) In this view, there can be no contention that this power of Congress and the Committee encroaches upon First or Fifth Amendment rights.

(i) As we have shown (*supra,* pp. 54–61), the Resolution must be interpreted so as, at the very least, to embrace the Communist activity which was the subject of the inquiry. Indeed, petitioner's contention is not that the resolution cannot be construed to cover what was undertaken by the Committee. It is, rather, that the ultimate extent of the Resolution is so undefinable that no one ought to be obliged to respond to an investigation conducted pursuant to its terms, however obvious it may be that the Resolution covers the inquiry to which the complaining individual has been called.

Although we disagree with this view (see *infra,* pp. 77–95), we think it well to repeat here that petitioner has no standing to challenge the definiteness of the Resolution as to other persons differently situated, so long as it clearly applies to him. See *supra,* pp. 66–71; and see *Williams* v. *United States,* 341 U. S. 97, 101–102; *Jordan* v. *DeGeorge,* 341 U. S. 223, 231–2; *United States* v. *Petrillo,* 332 U. S. 1, 7. As to him, we think it clear that there is no Constitutional infirmity of vagueness.

To put it another way: In our view, the natural and spontaneous meaning of the Resolution is that it authorizes the Committee to investigate at least into "Communist propaganda" and "Communist propaganda activities." So read, as we have shown (*supra,* pp. 51–61), it clearly authorized the inquiry under consideration. So read, the questions petitioner refused to answer clearly were pertinent to the inquiry. So read, there can be no questions of vagueness.

(ii) Nor, in this view, can there arise any question of deprivation of the rights guaranteed by the First Amendment, although petitioner urges that he could not be compelled to answer the questions put to him in this case because they call for the disclosure of political affiliations and associations which, he says, is barred by the First Amendment.

Petitioner is a national officer in a union which has voluntarily assumed certain quasi-public responsibilities in connection with labor-management relations. See *American Communications Association* v. *Douds,* 339 U. S. 382, 401–402. Information relative to the organization, structure, activities and membership of such a union does not pertain merely to private "political associations." Whether there may be private aspects to petitioner's relationships with the persons named, and whether there may be some political associations as to which there can be silence, the fact remains that petitioner here

has voluntarily assumed a public responsibility in connection with other UE officials the details of which he cannot refuse to disclose. Whatever is meant by "political associations and affiliations," it cannot reasonably include associations directly related to the union relationships involved in this case.[22] Congress may inquire into possible membership in the Communist Party of leaders of a union who are thought to have access to significant defense information. Even more clearly, Congress may inquire to discover the techniques which may be used to make the whole membership of a union subservient to the aims and policies of the Communist Party.

But, even if this view is not accepted, petitioner's argument is still without merit. This Court has held that, consistently with the First Amendment, Congress may constitutionally require leaders of labor unions, which invoke the benefits of the Labor Management Relations Act, to disclaim under oath their membership in the Communist Party. *American Communications Association* v. *Douds,* 339 U. S. 382; *Osman* v.

[22] Because 58 of the 68 counts against petitioner depend on his refusal to answer questions related to his knowledge of certain persons who were apparently UE officials, and to his knowledge whether those persons were in fact UE officials, and because petitioner's conviction can stand if only one of the 68 count in indictment is sufficient, the answer to this argument will be confined principally to those questions.

Douds, 339 U. S. 846. This is clearly recognition that the Communist Party cannot fairly be treated as an ordinary political party, nor associations in it as ordinary associations. The evidence that it is used for purposes, and with techniques, creating dangers to the national security is too impressive to ignore. Cf. *Dennis* v. *United States,* 341 U. S. 494. See also, *e. g., Adler* v. *Board of Education of the City of New York,* 342 U. S. 485; *Harisiades* v. *Shaughnessy,* 342 U. S. 580. These nonpolitical attributes of the Party are what justify not treating it as a mere political association. It follows, again, that whatever the propriety of inquiry into political associations, that is not a relevant issue here.

The fact is that Congress has legislated with regard to Communists and Communist propaganda with frequency in recent years. In petitioner's view, that legislation would have had to be enacted without the aid of a preliminary investigation or inquiry into the nature, techniques, and aims of Communist propaganda. Since such legislation has been upheld as not in violation of the First Amendment, *a fortiori,* a Resolution authorizing a committee of Congress to investigate into the desirability of further legislation is valid.

For the power to investigate must necessarily include power to inquire into what can and cannot be regulated, so as to draw a line in legis-

lating, and must therefore be broader in scope than the legislative power itself.[23]

C. THE RESOLUTION, ON ITS FACE, IS CONSTITUTIONAL

We have shown, that whatever else the Resolution might encompass, it clearly covered the inquiry with which this case is concerned and that the questions which petitioner refused to answer are plainly within the scope of that inquiry. Petitioner, however, contends that the Resolution is so vague on its face as to be unconstitutional, and that the Resolution, broadly read, violates the First Amendment. Although for the reasons we have discussed (pp. 66–71), we do not believe that these contentions need be faced on this record, we shall present the reasons for our view that these contentions are without merit.

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[23] *United States* v. *Rumely*, 345 U. S. 41, is not inconsistent with this view. In the first place, this Court expressly abstained from deciding to what extent the First Amendment prohibited Congressional investigation into lobbying activity. In the second place, as the Court pointed out (345 U. S. at 45): It was "* * * giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process," which raised doubts of constitutionality in view of the prohibition of the First Amendment. Here, however, the scope of the Resolution with which we are here concerned at this point is limited to Communist propaganda and Communist activity, clearly legitimate objects of legislative concern.

1. *The Resolution, on its face, satisfies whatever standards of definiteness may be applicable to Resolutions establishing congressional committees*

(a) *Standards of definiteness are inapplicable to Resolutions establishing congressional committees.*—In order to determine whether the committee resolution is unconstitutionally vague, it is necessary, first, to consider the criteria which govern Congress in establishing committees with investigatory powers.

We start with the proposition that no provision of the Constitution—and nothing in its basic structure—limits the powers of inquiry which Congress may bestow on any committee, so long as it does not go beyond the sphere over which Congress itself has authority. There is no doctrine of separation of powers as between Congress and its committees. In the beginning, the Senate had only 26 members, less than some present committees,[24] and only slightly more than the 21 members on the present Senate Committee on Appropriations. 60 Stat. 815. Indeed, R. S. 102 still refers to matters "under inquiry before either House * * * or any committee of either House."

An inquiry by a House of Congress could be conducted without any underlying statute or res-

[24] Most House committees have 25 or 27 members. The Committee on Appropriations consists of 43 members. 60 Stat. 822.

olution defining its scope. The inquiry would necessarily be limited to subjects which Congress had constitutional authority to investigate. It would be necessary to show that a particular question pertained to such a subject, but the absence of a resolution describing the subject to be investigated would not render the whole proceeding void.

The committees sit as arms of Congress, not as subordinate agencies. And the necessities of their relationships to Congress require that the subjects over which they have jurisdiction be broadly defined, for it is not the purpose or function of the resolutions defining their jurisdiction to set standards of conduct. It is the purpose and function of such resolutions to permit recommendations with respect to what standards of conduct should be enacted. It is the purpose of such resolutions, particularly when they run to standing committees, to create a ready intelligence to evaluate and recommend in a general area of legislative activity. The precise nature of all the questions that will fall into this area obviously cannot be known in advance of drafting the resolution (as may perhaps be the case with limited special inquiries, cf. *United States* v. *Rumely*, 345 U. S. 41).

The history of the Legislative Reorganization Act emphasizes this. It shows that a major purpose of the Act was to put an end to over-

lapping committees, so that it could be told, without conflict, to precisely what committees particular legislative matters should be assigned, and so that individual congressmen could concentrate their attention on a smaller number of committees.

This suggests that the framing of committee resolutions was regarded as a largely administrative matter, having no regard to problems of specificity; and, indeed, suggests that the problem, as Congress saw it, was not that earlier committee assignments were too general, but, rather that they were too specific to permit flexible administration.

Each regular standing committee—at least in the Senate (Legislative Reorganization Act, 1946, Sec. 134, 60 Stat. 831–832)—may make "investigations into any matter within its jurisdiction."[25] The Committees on Interstate and Foreign Commerce, for example, have jurisdiction over "interstate and foreign commerce generally," *inter alia* (*id.*, at 817, 826); the Committees on the Armed Services over "common defense generally," *inter*

[25] Investigations are authorized in the House by special resolution. But these resolutions frequently authorize the standing committees merely "to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such committee." See, for example, House Resolution 141, 80th Cong., 1st Sess., printed at 93 Cong. Rec. 5057, which uses the above language in authorizing the Committee on Armed Services to conduct an investigation; House Resolution 93, printed in 93 Cong. Rec. 5058.

alia (*id.*, at 815, 824); and the Committees on Appropriations simply over "appropriation of the revenue for the support of the Government" (*ibid.*)—which might permit inquiry into every subject for which Congress does or could be asked to appropriate money. These definitions of the powers of Congressional committees are far broader than the standards of definiteness required in criminal statutes. They are far broader than the standards applicable when the Congress is delegating authority to the Executive Departments or agencies. No administrative body could be empowered merely to regulate "interstate or foreign commerce generally." Cf. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495. And yet no one has ever suggested that these committees are unconstitutional, or that they lack power to investigate, because of the sweep of their authority. It is, indeed, clear why there has never been any such suggestion. To judge committee resolutions by normal standards of definiteness would invalidate every general assignment of committee jurisdiction and hobble almost beyond repair the administration of Congress. In short, criteria of definiteness do not apply to Congressional Resolutions of the kind here involved.

(b) *No problem of definiteness is presented so long as the subject of the actual inquiry has been disclosed.*—The only basis for suggesting, in the face of all these considerations, that the rule as to

definiteness of criminal statutes becomes applicable in a prosecution for refusing to testify before a committee, is the assumption that R. S. 102 and the statute or resolution embodying the Committee's authority must be read together as an integrated criminal law, and that if the authorizing resolution so read does not satisfy criminal law standards of definiteness it must be deemed unconstitutional insofar as compelling testimony from witnesses is concerned. But acceptance of this argument would impose upon the power of Congress to create committees requirements as to specificity entirely inconsistent with practice and history, and without any constitutional basis. For the long-exercised power to establish committees with general investigating authority would be futile if such committees could not prosecute witnesses who refuse to testify.

Nor is any such limitation essential to protect witnesses against essential unfairness or infringement of their right not to be questioned about matters outside the constitutional authority of Congress. We turn to the criminal statute, 2 U. S. C. 192, to see whether it gives a witness or prospective witness an "ascertainable standard of guilt" (*Winters* v. *New York*, 333 U. S. 507, 515), without regard for the generality of the statute or resolution by which a committee is created.

There is no problem with respect to the first portion of 2 U. S. C. 192, which provides that "Every person who, having been summoned as a witness

by the authority of either House of Congress to give testimony or to produce papers upon any matters under inquiry before either House * * * or any committee of either House of Congress, willfully makes default" shall be guilty of a misdemeanor. The ingredients of the crime are that the witnesses must be summoned to give testimony, that it be on a matter under inquiry, and that he "willfully makes default." There is nothing indefinite about any of these factors insofar as the witness is concerned. The statute does not leave it to the witness to determine the nature of the matter under inquiry; he need only know that the summons is to testify on a matter which is under inquiry. And this is a reasonable means of exercising the power of Congress to investigate. The defaulting witness is not thereby deprived of his right to defend against prosecution on the ground that the whole proceeding is unconstitutional, but that does not go to the definiteness of the statutory obligation.

Nor is the second clause of 2 U. S. C. 192—which is involved in the present case—which punishes refusal "to answer any question pertinent to the question under inquiry," made unconstitutionally indefinite by the generality of the statute or resolution creating the investigating committee. If we assume that the witness must have a basis for judging the pertinence of the "question under inquiry" in order to determine whether he must answer, it does not follow that such information

is obtainable only from the resolution creating the committee. A witness might not be aided by reference to "the common defense generally" or to "interstate and foreign commerce generally." The precise question under inquiry in an investigation or in a portion of it would normally be obvious at the time of the question. A witness who honestly had doubts could ask the committee before deciding whether to answer a particular question.

The inquiry here was in fact pin-pointed to the consideration of the advisability of two legislative proposals, one in the form of a bill referred to the Committee by the House, and the other developed by virtue of the Committee's own earlier investigations. See pp. 51–54, *supra*. Although it is not clear that the witness was specifically informed on this point, it was a matter of public record, and he seems to have raised no question at the time as to the purpose of the hearing.[26] In any event, it would seem that the test of what was under inquiry was what was in fact under inquiry, not what petitioner might have thought was under inquiry.

So far as we have been able to discover, there is no case authority which would require that the

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[26] The fact that the Chairman stated that the "purpose of this Committee is to expose communism * * *" does not establish that the petitioner was misled as to the purpose of the hearing. Cf. *infra*, pp. 103–111.

resolution be read as an integral part of 2 U. S. C. 192 as definitive of the offense. However, there is one group of cases which would seem to be analogous. Convictions have been sustained for violations of administrative regulations, where the regulations have been promulgated under some very general standard. See, *e. g., Boyce Motor Lines* v. *United States,* 342 U. S. 337. In such cases, obviously, the general standard is not required to meet criminal statute standards of specificity. The test is whether the regulation, in a general way, embodies the principle authorized by the basic statute, and whether the regulation is itself definite enough.

The policy embodied in these holdings is basically the same policy embodied in dealing with Congressional regulations. An area of conduct, for purely practical reasons, cannot be defined precisely in advance. *Ad hoc* administration by Congress, on the other hand, would create chaos. Congress cannot pass a law for every industry subject to a general kind of regulation, if it is to have time to do anything else. Equally, Congress cannot pass a resolution for the investigation of every problem that comes before it. If the specificity of the particular regulation having impact on the complainant suffices in the administrative regulation field, it ought also to suffice, *a fortiori,* in the area of investigative resolutions.

In this view there is, of course, no problem of vagueness of the Resolution, for the subject matter of this particular inquiry was quite clear and specific, and the particular questions asked were obviously pertinent to that inquiry.

(c) *In any event, the Resolution here is sufficiently definite.*—Petitioner's principal contention as to the alleged ambiguity of the Resolution relates to the words, "un-American," "subversive," and "propaganda" and "propaganda activities." Assuming, *arguendo* (but cf. *supra,* pp. 66–71), that petitioner can challenge the Resolution in this manner, we think it clear that each of these terms may fairly be given an operable definition, and that the Resolution, as a whole, is sufficiently definite.

(i) *"Un-American"*: Clause (i) of the Resolution gives the Committee the authority to investigate "the extent, character, and objects of un-American propaganda activities in the United States," and clause (ii) of the Resolution gives the Committee authority to investigate "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *." This language of the second clause at least makes clear one meaning of "un-American." For it shows, on the very face of the Resolution, that "un-American," as used in the first clause, includes "subversive" as that term is, in turn, limited in the second clause.

Although it can be urged that the use of "subversive and un-American" conjunctively in the second clause means that they are mutually exclusive, the more correct inference is that the words were conjoined for emphasis. A definition of "un-American" which did not include "subversive * * *" would, to say the least, be completely unrealistic (see pp. 87-91, *infra,* dealing with the definition of "subversive"). But even more convincing than this is the failure of the Resolution to include "subversive * * *" in the first clause, although it was spelled out in the second. It is unthinkable that Congress would have intended to investigate un-American propaganda activities, and *exclude* those activities carried on by subversives "instigated from foreign countries" and attacking "the principle of the form of government as guaranteed by our Constitution." The only conclusion that can be reached is that no such exclusion was intended, but that "un-American" was intended to be comprehensive of "subversive", as thus defined.[27]

(ii) *"Subversive propaganda":* Although the important word in the Resolution, from the point of view of clarity, is "subversive", it modifies

[27] Petitioner himself agrees with this view. At page 34 of his brief, he states that "The second clause of the resolution in no way expands its basic subject matter. It merely particularizes the generality of the first clause both with respect to the kinds of propaganda to be investigated * * * and the sources of such propaganda * * *."

"propaganda", which is therefore discussed first. This is, in an era of extensive propaganda warfare, surely a term of knowable content. It is not an indefinite concept incapable of practical application.[28]

But it is not all propaganda that is subject to investigation. It must be "subversive" propaganda. In the context of this Resolution, it is submitted that the word "subversive" plainly connotes propaganda that encourages illegal methods of undermining the principle of the republican form of government: espionage, sabotage, and the attempt to cause change in the form of our government without following normal constitutional processes.

In short, subversion refers, as simply and directly as any word could, to complete overthrow.[29]

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[28] Webster's *New International Dictionary* (Merriam-Webster 2d ed. 1950, p. 1983) defines it as follows:

> 2a. * * * Any organized or concerted group, effort, or movement to spread a particular doctrine or system of doctrines or principles; as, the need of a more active social *propaganda*. b. Now, often, dissemination of ideas, information, gossip, or the like, for the purpose of helping or injuring a person, an institution, a cause, etc.; as, the victim of the opposing party's *propaganda;* belligerent *propaganda* among neutrals.
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> * * * *
>
> 3 * * * (b) A scheme or plan for the propagation of a doctrine or system of principles; as, the cleverly worked-out *propaganda* of the enemy.

[29] The dictionary leaves no doubt of the narrow scope of the word. It refers to "subvert" which, in turn is defined

It refers, as we have said, to a change of government without benefit of orderly process.

Congress itself, less than a year after petitioner's testimony, labelled a subchapter of the Internal Security Act of 1950 as "Subversive Activities Control"; and included in that subchapter activities (1) which related, directly or indirectly, to advocacy of the use of force to challenge the Government, or (2) which involved espionage and related activities. 18 U. S. C. (Supp. V), Ch. 115, Subchapter I, 2385–2390. There was nothing new in this classification. The codifiers of the United States Code have consistently used "subversive" as a compendious description of those laws similar to those dealt with under the "Control of Subversive Activities", or those which dealt with certain inter-

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as follows (Webster's New International Dictionary (Merriam-Webster 2d ed., 1950)):

> [* * * fr. *sub.* under + *vertere* to turn * * *] *Transitive:*
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> 1. To overturn from the foundation; to overthrow; to ruin utterly; to destroy; also, to upset, uproot, or the like.
>
> * * * * *
>
> 2. To pervert, or corrupt (one) by undermining his morals, allegiance, or faith; to alienate; as, propaganda that *subverts* foreign-born citizens.
>
> 3. To destroy completely the existence, potency, soundness, etc., of; to render futile, void, inoperative, or the like; as, to *subvert* another's arguments, the principles of religion, the constitution, or the government.
>
> —*Intransitive:* To overthrow anything completely; to destroy. Syn.—See overturn.

ferences with the military establishment (*e. g.*, encouragement of insubordination or mutiny by military personnel). See 18 U. S. C. (1946 ed.) 9, 10, 11, 13, 14; 50 U. S. C. (Supp. V), Ch. 23, Subchapter I, 781–798; 8 U. S. C. (Supp. V), 137; 50 U. S. C. App. (Supp. V), 2263. While it is explicitly provided that inferences of legislative construction are not to be drawn from the placement of laws in the Code nor by reason of catchlines (Sec. 19 of the Act of June 25, 1948, 62 Stat. 683, 862), it is nonetheless true, and significant, that the codifier's use of "subversive" is consistent with the reasonable understanding which Congress' 1950 Act indicates; and that both are indicative that "subversive" is a concept of definite meaning. Cf. *Dennis* v. *United States,* 341 U. S. 494, 505; *Adler* v. *Board of Education,* 342 U. S. 485.

This meaning of "subversive", moreover, is emphasized by the Resolution itself which attaches the further condition that the subversive propaganda, to be subject to investigation, must also attack "the principle of the form of government as guaranteed by our Constitution." It is difficult to believe that anyone would read this as meaning anything other than the republican form of government which, too, has specific content.[30]

[30] The phrase is narrower than "the principles of the Constitution" discussed in *Schneiderman* v. *United States,* 320

"[T]he distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *In re Duncan,* 139 U. S. 449, 461. Thus, there must be, at least, an attempt, or a scheme or plan, to spread a system of ideas that rejects representative government; and even such a plan is not covered unless the propaganda is "subversive".

(iii) *"Propaganda activities":* As we have indicated above (pp. 57–61), "propaganda activities" as used in Clause (i) of the Resolution must refer to the mechanisms and devices of subversive propagandists which are integrally related to their propaganda. Clause (ii), however, refers,

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U. S. 118. The majority in the *Schneiderman* case did not find it necessary to define these principles, but accepted the Government's definition for purposes of the decision (320 U. S. at 140). The dissent of Chief Justice Stone defined the principles as follows: "* * * among them are at least the principle of constitutional protection of civil rights and of life, liberty and property, the principle of representative government, and the principle that constitutional laws are not to be broken down by planned disobedience. I assume also that all the principles of the Constitution are hostile to dictatorship and minority rule; and that it is a principle of our Constitution that change in the organization of our government is to be effected by the orderly procedures ordained by the Constitution and not by force or fraud." (320 U. S. at 181.)

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not to "propaganda activities," but merely to "propaganda". It seems clear, however, in spite of that fact, that this investigation would be comprehended by clause (ii) alone. For authorization to investigate the "diffusion" of subversive propaganda is, on its face, an authorization to determine how much the propaganda is spread, the channels through which it is spread, the techniques for making its spread effective, and the purposes for which it is spread.[31]

The remaining portions of the Resolution, moreover, emphasize that this is the purport of the word "diffusion." The first clause of the Resolution authorizes investigation into the "extent, character, and objects" of un-American propaganda activities, which shows, as we have already urged, that the investigation of those activities was to be complete. The third clause charges the committee to investigate all other questions, in relation to the investigations authorized in the first two, "that would aid Congress in any necessary remedial legislation." Again, this is a charge to make the investigation

[31] This is made clear, again, simply by turning to the definition of "diffusion", which refers to "spreading", "extension", "dispersion" and as synonym, to "propagation." Webster's *New International Dictionary* (Merriam-Webster 2d ed., 1950, p. 728). The substance of these explanations of the word shows precisely what Congress wanted to investigate: the extent, processes, and purposes by which described propaganda becomes a force in American public life and which must be reckoned with by legislation.

complete. The word "diffusion" is broad enough to authorize, similarly, an investigation of all relevant aspects of the described propaganda, and in this context, the inference is that it should have that meaning.

The difference between referring, on the one hand, to the "extent, character, and objects" in relation to propaganda activities, in clause (i) of the resolution, and referring, on the other hand, to "diffusion" in relation to "propaganda," in clause (ii), is obviously a reflection of the grammatical fact that "activities" do not "diffuse", whereas ideas and "propaganda" do. The difference certainly does not permit an inference that the investigation with respect to "subversive propaganda" was to be narrow.

Nor does the fact that the "diffusion" of "propaganda" is subject to investigation only when it is "subversive and un-American" whereas "propaganda activities" may be investigated if they are merely "un-American", have any tendency to show that the effects of propaganda cannot be fully studied. The difference in standard shows only that Congress was being very careful to avoid calling before it groups whose activities were merely propagandist, unless the propaganda was of a seriously disruptive nature. This has nothing to do with what sort of investigation is permissible once the group falls within the described class.

(iv) *The meaning of the clauses generally:* These considerations bearing on the meaning of the word "diffusion" serve also to emphasize generally that attention should be paid to the function the Resolution was designed to serve. Congress obviously cannot know in advance of investigation the various techniques by which subversive propagandists make their work effective. It cannot know how the subversive propaganda activities are tied to other subversive activities, although it obviously has reason to suspect that there is considerable interlacing. It framed a Resolution to permit the discovery of facts in this field. There is no reason why interpretation of the Resolution to that committee should be premised on a prescience that is absent.

This point may be emphasized further by pointing out that, although the words of the Resolution have been treated separately, this was not necessary. It is clear that the Resolution as a whole includes as one of its essential, fundamental, and separable charges, that the Committee should investigate the propaganda and propaganda activities of foreign instigated subversive groups, and the related ways in which such propaganda and activities have impact on matters as to which legislation would be possible and useful. The difficulty with petitioner's argument that the Resolution does not cover the investigation undertaken here is that it ignores the facts which the

Committee's work, if nothing else, had made clear: that the whole network of Communist activity centers around propaganda and propaganda activities. Communist infiltration of defense plants is an aspect and object of propaganda activities in those plants. The Committee thought this and, as we have pointed out, Congress endorsed that view. Congress never appears to have thought that the Committee was construing "diffusion", or "extent, character, and objects" or "propaganda activities" too broadly. The criticism of the Committee has been directed at the words "un-American" and "subversive". Nobody has ever doubted that, if the propaganda were adequately described, it should be possible to investigate it fully. This does not mean, of course, that guidance to the witness is in fact absent. For purposes of this case, the heart of the authorization is still only subversive propaganda instigated from a foreign country. That, as we have shown, is clear enough. But the Resolution also assures that the techniques of diffusion of subversive propaganda will be fully subject to investigation, rather than partially limited by arbitrary notions separating the propaganda technique from the propaganda.

2. *The Resolution, on its face, does not violate the First Amendment*

(a) Petitioner urges that the allegedly broad language of the Resolution and the action of

the Committee thereunder violates his Constitutional right of freedom of speech and of free political association. We have already shown (*supra*, pp. 73–77) that, in so far as the Resolution applies to Communist activity, it is clearly constitutional. We have further shown (*supra*, pp. 86–95) that, as the Resolution is reasonably to be interpreted, it is designed to authorize an investigation into the same kinds of evils which Communist propaganda and propaganda activities engender and represent. In our view, "subversive" and "un-American" "propaganda" and "propaganda activity" are clearly of the same order as Communist activity. Accordingly, it would seem clear that the Resolution, on its face, does not violate the First Amendment.

(b) The fact that the Resolution may authorize an investigation into both illegal advocacy and also into speech which Congress may not constitutionally proscribe, does not render it unconstitutional, for surely Congress may authorize one of its committees to investigate as to where it should and may attempt to draw the line between the legal and the illegal.

There is a well recognized field for legislation with respect to propaganda activities, notwithstanding the existence of constitutional limitations. From the information which the Committee receives, it conceivably could conclude that certain propaganda activities have reached

the stage where they present a "clear and present" danger of bringing about a substantive evil, such as the overthrow of our form of government by means inconsistent with the Constitution, and that remedial legislation is necessary. Cf. *Dennis* v. *United States,* 341 U. S. 494; *Dunne* v. *United States,* 138 F. 2d 137 (C. A. 8), certiorari denied, 320 U. S. 790. The Committee may learn that foreign governments are carrying on propaganda warfare in our midst with a view to undermining our constitutional principles through aliens who enter our shores. Such information could result, and has resulted, in the amendment of our immigration laws to close even more tightly our boundaries to classes of persons believed to be engaged in such activities. The data disclosed by the investigation might show, and have shown, the necessity for increasing our internal security forces, and legislation and appropriations for this purpose could be initiated. Or the inquiry might disclose, negatively, that appropriations for the investigation of activities of foreign governments should not be decreased—or that they could be.

Illustrative of legislation which might be based upon the information adduced under the Resolution are the Internal Security Act of 1950, the Immigration and Nationality Act of 1950, the statutes regulating correspondence with foreign governments (cf. 35 Stat. 1088, as amended, 47

Stat. 132, 18 U. S. C. (Supp. V) 953), imposing safeguards against seditious conspiracy (cf. 35 Stat. 1089, 18 U. S. C. (Supp. V) 2384), prohibiting measures undermining the morale of the armed forces (54 Stat. 670, 18 U. S. C. (Supp. V) 2387), authorizing government radio broadcasts to foreign countries (Act of January 27, 1948, 62 Stat. 6), prescribing qualifications for government employment, requiring the registration of foreign agents (cf. 53 Stat. 1244, 22 U. S. C. 601, 611), and organizations carrying on certain types of propaganda (cf. 54 Stat. 1201, 18 U. S. C. (Supp. V) 2386).

As the Court of Appeals for the Second Circuit stated in the *Josephson* case, 165 F. 2d at 90:

> Information gained by a committee of this nature, provided its search for the truth may not be frustrated by such obstructive tactics as those employed by the appellant, might well aid Congress in performing its legislative duties, viz., in deciding that the public welfare required the passage of new statutes or changes in existing ones or that it did not. Cf. Landis [*Congressional Power of Investigation,* 40 Harv. L. Rev. 153 (1926)], at pages 208–10. Some of these duties are imposed not only by the principle that the Government shall preserve itself, but, of course, by express provisions in the Constitution. Thus among the purposes of the Constitution, as expressed in the Preamble, are to "insure domestic Tranquility," to "provide for the

> common defense," to "promote the general welfare," and to "secure the Blessings of Liberty." Art. 1, sec. 8 gives Congress the power to "provide for the common Defense," "to raise and support Armies," "to provide and maintain a Navy," "to make Rules for the Government and Regulation of the land and naval Forces," and to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers." Art. IV, Sec. 4 provides that "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion" and on application "against domestic Violence."

The power to conduct an investigation with a view to possible legislation cannot be measured by the scarcity or the abundance of legislative recommendations emanating from the Committee or induced by its efforts.[32] Some of the effects may have been negative in character. Congress may be dissuaded from changing other laws or appropriations, or persuaded that for practical or constitutional reasons no legislation on a subject should be enacted.

The only matter of consequence, however, is whether the subject of the investigation is such that the legislative processes might be aided by

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[32] The Committee's legislative recommendations since 1939 are compiled in its 1952 Annual Report. H. Rept. No. 2516, 82d Cong., 2d Sess., pp. 81–88.

the facts disclosed. The facts amply demonstrate that the Resolution pursuant to which the Committee on Un-American Activities operate was designed to give such aid. The Resolution on its face declares that the investigation is to be such as will "aid Congress in any necessary remedial legislation."

(c) Even if the indirect effects of the Committee inquiry, which petitioners argue result from such inquiry, do obtain, nevertheless there is no violation of the First Amendment. First Amendment rights are not absolute. They have never been thought to preclude the compulsory giving of testimony. The power to compel testimony for public purposes—legislative as well as judicial—is essential to the existence and operation of organized society. Not infrequently, compelled disclosures may bring persons into disfavor or disrepute, may result in loss of employment or other manifestations of individual or popular ill-will. And there is, of course, even the more drastic penalty of imprisonment for refusal to testify.

But the need for accurate first-hand information as a basis for governmental action outweighs the interference with personal rights resulting from compelled disclosures. This is so even if the rights are thought to be within the field reached by the First Amendment. For those rights must be balanced against other legitimate and essential needs of the community.

The restraint imposed, by *ad hoc* disclosures of the sort sought here, on petitioner's rights freely to align himself with American political dissent, or worse, is quite moderate and indirect. He is prohibited from nothing. He is subjected to no criminal penalty. He is asked to disclose no belief. He is asked merely to help the Committee, for the benefit of Congress, to determine the organizational structure of UE and its relation to possible Communist infiltration in defense plants in which UE has contracts. The interest of the United States in protecting itself not from ideology, but from possible espionage or sabotage, and from the danger that workers in its most sensitive industries will be insensibly made the tools of a foreign power, is large and urgent. It is plainly as strong as, if not stronger than, that sustained the *Douds* cases.[33]

(d) Inherent in petitioner's argument is the contention that the "right to silence", is protected by the First Amendment. Even if it is accepted that disclosures before the Committee result in unfavorable publicity and discourage persons from subjecting themselves to the risk of

[33] Certainly, the interest involved in this case is as important as those on behalf of which other peripheral restraints on freedom of speech have been sustained. Compare *Beauharnais* v. *Illinois*, 343 U. S. 250; *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288; *United Public Workers* v. *Mitchell*, 330 U. S. 75; and *National Labor Relations Board* v. *Virginia Elec. & Power Co.*, 314 U. S. 469.

similar unfavorable reaction to the expression of their views, it does not follow that the First Amendment is in any way violated. For the sanction growing out of such disclosure is not a legal one, but, at most, the sanction of public opinion, against which the First Amendment does not guarantee.[34]

It was not this sort of indirect consequence of public disclosure with which the First Amendment was concerned. Such indirect consequences may result from any public investigation. The

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[34] See, generally, on this subject Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs* (1948) 47 Mich. L. Rev. 181, 213–222. See also The Report on Congressional Investigations (dated November 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York, which states (pp. 3–4):

> There seems to be prevalent a belief, although somewhat vague, that the individual American is endowed with some sort of a "right of privacy" which exempts him from inquiry into his private affairs. One hears it suggested that such an inquiry violates some protection afforded by the Bill of Rights. We know of no "right of privacy" or constitutional guarantee which makes a citizen immune to the giving of evidence where an inquiry is being made by a legally constituted Congressional committee engaged in a legitimate investigation—any more than a citizen is immune from having to give relevant testimony in a trial before a court of law. The questions, of course, must be relevant to the subject under investigation, and the decisions of the Supreme Court already protect the individual from being required to answer questions which are not pertinent to the inquiry. But, assuming that the question

Amendment does not provide that Congress may not inform the public; it provides that "Congress shall make no law * * * abridging the freedom of speech, or of the press." It was designed to prevent attempts by law to curtail freedom of speech. It was not intended to protect persons against unfavorable public opinion, even though such opinion may be stimulated by disclosures made to or by an investigating body. Nor does the possibility that persons may voluntarily refrain from expressing their views in order to avoid a hostile public reaction mean that any law has abridged their freedom of speech.[35]

D. THE RESOLUTION IS NOT UNCONSTITUTIONAL BECAUSE ONE OF THE COMMITTEE'S PURPOSES MAY HAVE BEEN TO EXPOSE SUBVERSIVE AND UN-AMERICAN ACTIVITIES

Petitioner contends that the Resolution is unconstitutional because the Committee's purpose is

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is material and relevant to an inquiry in aid of a lawful purpose of Congress, we do not believe that the individual is immune from being required to answer merely because the question delves into his private affairs, his previous utterances or his affiliations, political or otherwise. It is not necessary for the purpose of this report to attempt to predict what the courts may hold with respect to the inquiry into an individual's privately entertained belief, except to say that at all events a court would probably insist that the relevancy of such an inquiry be clearly established and that this would be true only in rather exceptional circumstances.

[35] *United States* v. *Rumely*, 345 U. S. 41, is not to the contrary. There, this Court expressly refrained from deciding the relationship between the First Amendment and the Congressional power to investigate.

to publicize, to expose, subversive and un-American activities. The excerpts from the reports of the Committee and the statements quoted by petitioner do indicate that this was *one* of the objects of the Committee. But it does not follow that the Resolution establishing the Committee is unconstitutional.

We shall show that it is entirely proper for Congress to investigate for purposes of disclosure within the field of its constitutional jurisdiction. But even assuming the contrary, petitioner has no valid complaint.

1. In the first place, the existence of an intent to combat subversive activities by publicity does not mean that an inquiry is not also in aid of legislation. A disclosure, for example, that a certain organization was led by persons who were subservient to a foreign government would both tend to open the eyes of the public as to the nature of the organization and be relevant in determining whether legislative regulation of foreign agents were desirable.

Here we are concerned with the contentions that the members of the Committee or of Congress might have some other or even an improper motive. But this does not invalidate a legislative act such as the Resolution here involved, which is constitutional on its face. Compare *Sonzinsky* v. *United States*, 300 U. S. 506, 513–514; *Goesaert* v. *Cleary*, 335 U. S. 464, 467;

Veazie Bank v. *Fenno,* 8 Wall. 533, 548; *McCray* v. *United States,* 195 U. S. 27, 56–59; *United States* v. *Doremus,* 249 U. S. 86, 93–94; *Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44, 45.

Even more clearly, the co-existence of a proper and improper purpose by those entrusted with the administration of a Congressional Resolution does not vitiate legislative action. Throughout our history one of the most common criticisms of Congressional committees has been that they were being used by sponsors or members for political or personal reasons distinct from the ostensible aim of aiding the legislative functions of Congress. Cf. Dimock, *Congressional Investigating Committees* (Johns Hopkins University Studies, Series XLVII, No. 1, 1929), p. 164. In *McGrain* v. *Daugherty,* 273 U. S. 135, and *Sinclair* v. *United States,* 279 U. S. 263, similar attacks were made upon the motives of a Congressional committee. Sinclair argued that the purpose of a question put to him was to aid the prosecution in pending litigation and was therefore improper. But this Court stated (p. 295):

> It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought

> to be elicited may also be of use in such suits.
>
> The record does not sustain appellant's contention that the investigation was avowedly not in aid of legislation. He relies on the refusal of the committee to pass the motion directing that the inquiry should not relate to controversies pending in court, and the statement of one of the members that there was nothing else to examine appellant about. But these are not enough to show that the committee intended to depart from the purpose to ascertain whether additional legislation might be advisable. It is plain that investigation of the matter involved in suits brought or to be commenced under Senate Joint Resolution 54 might directly aid in respect of legislative action.

The *Sinclair* case involved refusal to answer a specific question. In the *McGrain* case there was a failure of the witness to appear at all. The Court indicated clearly there that the purpose of Congress was to be determined from the terms of the authorizing Resolution. See 273 U. S. at pp. 170, 172, 175–178. The Court stated (p. 178):

> The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating; and we think the subject-matter was such that the presumption should be indulged that this was the real object. An express avowal of

> the object would have been better; but in view of the particular subject-matter was not indispensable. In the *Chapman* case, where the resolution contained no avowal, this Court pointed out that it plainly related to a subject-matter of which the Senate had jurisdiction, and said "We cannot assume on this record that the action of the Senate was without a legitimate object." * * * In *People* v. *Keeler,* 99 N. Y. 463, * * * the court said (pp. 485, 487): * * * "We are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed, and we have no right to assume that the contrary was intended."

(Pp. 175–176)

> The contention is earnestly made on behalf of the witness that this power of inquiry, if sustained, may be abusively and oppressively exerted. If this be so, it affords no ground for denying the power. The same contention might be directed against the power to legislate, and of course would be unavailing. We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses.

2. Since the Resolution was predicated on the need for information for legislative purposes, it is unnecessary to decide whether Congress has authority to investigate for the sole purpose of

bringing information to public attention. There is considerable support, however, among students of Congressional power for the view that the "informing function" of Congress in itself would have brought the investigation within its constitutional competence.[36] Potts, *Power of Legislative Bodies To Punish for Contempt*, 74 U. Pa. L. R. 691, 811; Galloway, *Investigative Function of Congress*, 21 Am. Pol. Sc. Rev. 47, 62; Cousens, *Investigations Under Legislative Authority*, 26 Georgetown L. J. 905, 918; McGeary, *The Developments of Congressional Investigative Power*, p. 104. Woodrow Wilson expressed the opinion that

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them

[36] It has been suggested that the function of informing the public is implied and inherent in the legislative purpose. Landis, *Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 205, 206, n. 227 (1926). A representative democracy relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation.

> by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.[37]

We submit that Congress may under the Constitution undertake investigations for the purpose of publicizing information at least so long as the matters to be disclosed are related to a substantive congressional power. It is settled that Congress in the exercise of its regulatory power may authorize an administrative agency to receive and publicize information. *Electric Bond & Share Co.* v. *Securities & Exchange Commission*, 303 U. S. 419. In the *Electric Bond & Share Co.* case, this Court observed, in relation to the registration provisions of the Public Utility Holding Company Act, that "the requirement of information is in itself a permissible and useful type of regulation" (p. 439). This method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. E. g., newspapers using the mails, 37 Stat. 533, 39 U. S. C. 233 (*Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288); Securities Act of 1933, 48 Stat. 74, 15 U. S. C. 77a; Food, Drug and

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[37] Wilson, *Congressional Government*, as quoted in *United States* v. *Rumely*, 345 U. S. 41, 43.

Cosmetic Act, 52 Stat. 1040, 1041, 21 U. S. C. 321; Alien Registration Act, 54 Stat. 673, 8 U. S. C. 452; registration of lobbyists, 60 Stat. 839, 2 U. S. C. 261; registration of foreign agents, 52 Stat. 631, 22 U. S. C. 611; registration of certain subversive organizations, 54 Stat. 1201, 18 U. S. C. (Supp. V) 2386.

Indeed, the principle of disclosure has been advanced by persons zealous to protect civil liberties as the best method of dealing with the Communist problem in this country. The Report of the President's Committee on Civil Rights (*To Secure These Rights,* U. S. Govt. Printing Office, 1947) concluded that (pp. 52, 53):

> The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups.
>
> * * * * *
>
> The federal government * * * ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion.

See also the *Josephson* case, *supra,* 165 F. 2d at 89.

Inasmuch as propaganda emanating from foreign sources may affect the foreign relations of the United States, the national defense, and the

obligation of the United States to guarantee to each state a "Republican Form of Government" and protection against both "Invasion" and "domestic Violence," we think it clear that Congress has power under the Constitution to adopt a program of publicity and disclosure as a public safeguard against subversive propaganda which Congress does not wish to, and perhaps cannot, prohibit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals be affirmed.

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